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## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Tuesday 15 September 1992

### Standing committee on administration of justice

Consent to Treatment Act, 1992

Advocacy Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Mardi 15 septembre 1992

### Comité permanent de l'administration de la justice

Loi de 1992 sur le consentement  
au traitement

Loi de 1992 sur l'intervention



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman





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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 15 September 1992

The committee met at 1025 in room 151.

### CONSENT TO TREATMENT ACT, 1992 LOI DE 1992 SUR LE CONSENTEMENT AU TRAITEMENT

Consideration of Bill 109, An Act respecting Consent to Treatment / Loi concernant le consentement au traitement.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. Good morning. Well done last night. Now we'll be going back to the Liberal motion that was stood down, section 15.2.

Mrs Sullivan moves that the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following section:

"Child in need of protection

"15.2 Nothing in this act affects the law with respect to a child in need of protection within the meaning of subsection 37(2) of the Child and Family Services Act."

**Mrs Barbara Sullivan (Halton Centre):** The intent of this amendment is to ensure that children's aid societies not only have the authority but understand that they have the authority under the Child and Family Services Act to carry out their standard and mandatory duties under that act, as they have in the past. As you know, that act was amended fairly recently and updated. This is simply an underlining that the provisions of the Consent to Treatment Act will not interfere with the CFSA.

**Mr Jim Wilson (Simcoe West):** I can't find the amendment. Is it subsection 37(2)?

**The Chair:** No, section 15.2. It was the one that was stood down last night and we agreed to go right back to first thing this morning.

**Mr Paul Wessinger (Simcoe Centre):** We'll be opposing this motion because we'll be moving later an alternative motion to add section 45.1, which will deal with the aspect of conflicts with the Child and Family Services Act, which will provide that in the event of a provision of this act conflicting with a provision of the Child and Family Services Act, the provision of the Child and Family Services Act will prevail. So we'll be opposing this motion and we will be moving our own amendment in this regard.

**Mr Norman W. Sterling (Carleton):** We're aware of the government's intention to introduce a motion to this other section which will, in effect, put this act in behind the Child and Family Services Act for a period of three years, as I understand it. We deem that a reasonable compromise to reach on this. It will provide, I guess, a period of time of safety, which we think is reasonable in the circumstances. Legislators can then deal with it in a three-year period if that has to be extended.

**The Chair:** Seeing no further discussion, we'll proceed to the vote on the Liberal motion on section 15.2. All those in favour? Opposed?

Motion negatived.

**The Chair:** We'll proceed from where we left off yesterday, the Liberal motion on subsection 24(1).

**Mrs Sullivan:** Mr Chairman, I'd just like to give notice that I have an amendment coming to clause 23.1(b). It hasn't arrived yet, if we can go back to that section subsequently and move ahead. That amendment will not affect any of the subsequent amendments in section 24.

**Mr Wessinger:** I have no problem.

**Mr Jim Wilson:** Which clause?

**Mrs Sullivan:** It's 23.1(b).

**Mr Jim Wilson:** I have an amendment for that too.

**Mr David Winninger (London South):** We'll stand that one down.

**The Chair:** Okay. As soon as they come forward, we'll bring them up.

Liberal motion on subsection 24(1).

Mrs Sullivan moves that subsection 24(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by inserting after "grounds" in the third line "and in good faith."

**Mrs Sullivan:** This amendment is put forward as a direct result of interventions from the College of Physicians and Surgeons of Ontario and from the ad hoc committee, particularly the Ontario Medical Association, as I recall.

With respect to the protection from liability, which refers to the health practitioner, the recommendation of those groups and organizations has been that the good-faith test be added to the reasonable grounds test. I'm trying actually to find the specific sections.

There are some pertinent sections from the College of Physicians and Surgeons brief which I'd just like to read into the record:

"Last year before this committee, the Minister of Health expressed concern about creating a situation where practitioners felt it necessary to observe the technical requirements of the bill rather than using common sense to act in the best interests of their patients. We share that concern. But by setting up a bureaucratic legal standard of reasonable grounds in all circumstances, the government will encourage health care workers to observe technical compliance above all else.

"If the government wishes to ensure that the interests of vulnerable or incapable people come first and do not get lost in bureaucratic interpretations of the act, then it should allow health care practitioners, whether nurses, midwives



or doctors, to act in accordance with the judgement they are trained to deliver; in other words, in good faith."

The college goes on to say, "The government would appear to believe that vulnerable people in need of advocacy services are best served by this approach. In section 9 of Bill 74, advocates are allowed to exercise their trained judgement in good faith. We believe all patients deserve this protection."

I think that's a very explicit and concise approach to the rationale for adding this amendment. The college, as you know, is the disciplinary body and, frankly, its underlining of the importance of this amendment has meant a lot to me in putting it forward. They believe that the professional judgement that's associated and reached in good faith and the treatment which is delivered in good faith should be a test in the protection from liability for the practitioner.

I think it's a rational and reasonable argument and the government should accept it.

**Mr Wessenger:** Yes, we'll accept that amendment.

**Mrs Sullivan:** I thought you weren't going to.

**The Chair:** Seeing no further discussion, we'll proceed to the vote. All those in favour of the Liberal motion on subsection 24(1)? Opposed?

Motion agreed to.

**The Chair:** The PC motion on subsection 24(1).

**Mr Jim Wilson:** Since this motion is identical to the Liberal motion, we won't be introducing it at this time.

**The Chair:** Liberal motion on subsection 24(2).

Mrs Sullivan moves that subsection 24(2) of the bill, as reprinted to show the amendments proposed by the minister, be amended by inserting after "grounds" in the third line "and in good faith."

**Mrs Sullivan:** Mr Chairman, the same rationale follows and I assume that we have agreement.

**Mr Wessenger:** Yes, we do have agreement.

Motion agreed to.

**The Chair:** A PC motion on 24(2).

**Mr Jim Wilson:** We were just sort of wondering why the Liberals always get to go first with our motions and whether that be simply custom around here or whether it's a steadfast rule. I wouldn't mind knowing that, Mr Chairman.

**The Chair:** This is the way I inherited the committee and they agreed that's the way they wanted me to continue.

**Mr Jim Wilson:** I'll tell you, you're going to have to chat with the members of our subcommittee.

**Mr Sterling:** No, our subcommittee never agreed to that.

**Mr Jim Wilson:** It's a strange custom, I think. I don't think there's actually any rule for it, but I'd be interested to know that.

**Mr Alvin Curling (Scarborough North):** Get more seats in the House.

**Mr Jim Wilson:** It's okay, we'll be the government next time. We'll have the overall prerogative.

**The Chair:** Then you can make your own rules.

**Mr Jim Wilson:** With reference to the subject at hand, we will not be introducing our motion dealing with subsection 24(2) since it is identical to the Liberal motion which we just agreed to.

**Mr Sterling:** I think we should rephrase that. Their motion is identical to our motion.

**Mr Jim Wilson:** That's true. Their motion, as all members will note, is identical to the PC motion, and our press release will reflect that fact.

**The Chair:** The Liberal motion on subsection 24(3).

**Mr Sterling:** Could I just revisit this, because perhaps Mr Wilson was a little hasty in drawing the parallel. There's a difference in the wording in both 24(1) and 24(2) in that our motion strikes out "unreasonable grounds" and inserts "in good faith." Theirs is a dual test and it says "reasonable grounds" and "good faith."

**Mr Winner:** It's better.

**Mr Sterling:** Basically it's additive and putting more of a burden upon the health care practitioner. Our motion, quite frankly, was the opposite. We thought the health care practitioner should only act or be required to act as long as he or she was acting in good faith. Then that was a sufficient test because of the burden that's being placed upon the health care practitioner in section 4, which I asked to be stood down. Therefore I would ask, quite frankly, that we be given the opportunity to place our amendments to both 24(1) and 24(2), because they are quite different in their meaning, the two motions.

**Mr Wessenger:** I can understand Mr Sterling's point and I think he should be allowed to reopen and move his motion and have a vote on it, because he's quite right, they are substantially different.

**Mr Jim Wilson:** I appreciate the committee's indulgence on that too, because I did draw a hasty and inaccurate conclusion and my learned colleague in the law has pointed that out correctly, so I would appreciate the committee's indulgence.

**The Chair:** Mr Sterling moves that subsection 24(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "on reasonable grounds" in the third line and substituting "in good faith."

Being the other amendment by the Liberals was already passed, I think all you need is "unreasonable" because "grounds" has already been stricken out from the previous amendment.

**Mr Sterling:** No, it did not strike out "grounds."

**The Chair:** Sorry, my apologies. Discussion?

**Mr Sterling:** I don't know whether the motion is absolutely correct. I think everybody understands the intent of it.

**Mr Winner:** I'd prefer not to delete the phrase "on reasonable grounds." The reasonable person test is a well-known test in the law. It's more objective than just "in good faith." I can think of many examples where acts were done in good faith that we would never countenance today.



For example, people were persecuted and killed during the Inquisition in good faith.

If you delete the reference to "reasonable grounds," I think you're setting a fairly dangerous precedent where people who are duly qualified professionals and expected to exercise a test of reasonable competence would be able to excuse either treating with consent or not treating without consent on the basis of good faith, and I submit, wouldn't be called upon, on the basis of this, to meet a reasonable person test or even a reasonable professional test.

1040

**Mr Sterling:** I didn't have an opportunity to explain my motion. Normally, Mr Chairman, you allow the proposer of the motion to have an opening remark or whatever you want to call it.

I think we should turn our minds to some of the discussion Mr Wilson has made me aware of, which I was not here for; that is, that we require, under this act, a number of people to be certain that a consent has been obtained and that it has been properly obtained. We require under section 4 that, "A health practitioner who proposes a treatment to a person shall ensure that it is not administered unless," and then we go through a number of tests to make certain he's got the consent.

I believe there are other sections which also put on "the health practitioner who proposes the treatment." Now it may not be the same health practitioner who carries out the treatment, and it throws the burden upon the health practitioner not only with regard to what is occurring through his direct control but through his indirect control as well.

Do we want a whole body of law to build up about what are reasonable grounds for seeking this consent or do we want to say to the health care practitioner, "You acted in good faith; you sought to assure yourself that consent was there"? Is that not enough in terms of asking our health care practitioners, or are we going to establish a whole procedure which they have to go through in order to check with the official guardian's office, that they have to do this and do that etc, even though the official guardian's office was closed at the time they made their first call? Do we want a whole area of law developed on finding out whether there has been adequate consultation, whether the adviser has been called in, who was the adviser, was the adviser prescribed under the act, all of those kinds of things?

What I think most people would accept as reasonable is that if the health care provider, be it a nurse who is administering a needle, be it any one of the other 24 health disciplines who might be providing it, acted in good faith and thought properly that there was consent, then he should go ahead with the treatment. I think that's enough. I just don't think we should be throwing our health care providers into an even more mistrusted state than we are by creating this act. I believe what I'm asking is a lower threshold of test than is provided in this act and I think it's fair.

**Mrs Sullivan:** The very issues Mr Sterling has raised came to my mind in reviewing the recommendations of the

college. The college has specifically recommended the words "that a health practitioner believes, on reasonable grounds and in good faith to be sufficient for the purposes of this act." That is part of their brief to the committee on the last go-round.

I had several conversations with them with respect to that presentation, because I felt there would be a double test and a more stringent test if the two issues were included. They took this back into meetings to review the recommendation they had made before committee and came back to me with the same recommendation before us. They felt that the two tests were appropriate, one of a more legalistic nature would be balanced by the "good faith" test, and that it was not a harder test or a more stringent test, that it was a more equitable test and would give physicians a greater freedom in terms of exercising their professional duties. I had explored precisely those issues with the college in questioning the recommendations that it had put forward and I think Mr Sterling has voiced very similar arguments to those I put to the college as a result of its recommendations.

**Mr Jim Wilson:** Mrs Sullivan is correct, I think, with regard to a position held by the CPSO at one time. The preferred option would be as Mr Sterling has pointed out.

I think it's also fair to point out to members that the public guardian and trustee and other substitute decision-makers are held to the lesser standard of good faith and that perhaps it's just logical and more consistent to have all partners in this legislation held to the same threshold. It makes sense and I think it adds to consistency and a better understanding by the public and by the professionals who have to deal with this legislation if they know they are being treated equally. That's certainly been a principle of this government and I think it should be reflected in this legislation.

**Mr Wessinger:** We'll be opposing this amendment as well because if you take out the "on reasonable grounds," in effect, in my opinion, you do not have an enforceable act in any respect to the question of consent to treatment, so it's essential that you have a professional test. I think that's the reason the college itself supported the retention of the "on reasonable grounds" and I think the "on reasonable grounds" and "in good faith" is a good combination.

**The Chair:** Further discussion? Seeing no further discussion, proceed to the vote. All those in favour of the PC motion on subsection 24(1)?

**Mr Sterling:** Could we have a recorded vote on that?

The committee divided on Mr Sterling's motion, which was negatived on the following vote:

**Ayes—2**

Sterling, Wilson (Simcoe West).

**Nays—9**

Akande, Carter, Curling, Malkowski, Miclash, Morrow, Sullivan, Wessinger, Winninger.

**Mr Sterling:** You want me to withdraw the other motion, don't you?

**The Chair:** It hasn't been introduced.



**Mr Sterling:** Well, I'm not going to introduce it.

**The Chair:** Thank you very much. To finish off section 24 before we go back to section 23.1, we have a Liberal motion, subsection 24(3).

Mrs Sullivan moves that subsection 24(3) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Emergency treatment

"(3) A health practitioner who, in good faith, administers treatment to a person in accordance with section 22 or 23.1 or refrains from doing so in accordance with section 23 is not liable for administering the treatment without consent or for failure to administer the treatment, as the case may be."

**Mrs Sullivan:** Once again, this motion follows precisely the recommendations of the College of Physicians and Surgeons in this area and I put it forward to the committee for its acceptance.

**Mr Wessenger:** Perhaps we could ask legislative counsel, but there appears to be maybe a word left out of this resolution. It's been suggested that there should be a second "who" after the "or" in the second line. It's purely a matter of English. It was in our original draft.

1050

**Mr Doug Beecroft:** I think the "in good faith" provision is supposed to apply to both administering and refraining from doing so. I think if you put the "who" in there, you're going to have to repeat the "in good faith," so I think it's better without.

**Mr Wessenger:** You think it's better without. Okay, that's fine. We'll be supporting the motion.

Motion agreed to.

**The Chair:** Okay, we'll go back to the PC motion on clause 23.1(b).

**Mr Sterling:** What motion are we referring to?

**The Chair:** The PC motion on 23.1(b).

Mr Jim Wilson moves that clause 23.1(b) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "has reasonable grounds to believe" in the first and second lines and substituting "is of the opinion."

**Mr Jim Wilson:** If members look at section 23.1, I would argue, and I think we have some agreement on the government side, that it puts an almost impossible burden on the health care practitioner. As 23.1(b) reads in the reprint, there's a "reasonable grounds" test, that the health practitioner has reasonable grounds to believe that the person who refused consent did not comply with section 14, which calls upon the health care practitioner, in subsection 14(2), to decide whether the values and beliefs of that person were taken into consideration. If you read that, it's almost impossible for the health care practitioner to know that. Therefore, we feel that the better wording of this section would be "is of the opinion" and remove "has reasonable grounds to believe."

**Mr Wessenger:** We will be supporting this amendment because I agree with Mr Wilson that in the question of dealing with values, it's very difficult to have "reason-

able grounds to believe" and that "in the opinion" is more workable language.

**Mrs Sullivan:** I have a further amendment which would strike this entire section, because I believe this is an impossible requirement to place on the practitioner, whether a dentist, nurse or midwife, and I am very concerned about the requirement being placed on the practitioner in these circumstances. I think the whole thing should be struck. That's my next amendment.

**The Chair:** Possibly, with the indulgence of the committee, we could have unanimous consent to deal with Mrs Sullivan's motion first? Her motion is to strike the whole section. Do we have unanimous consent to deal with that first?

**Mr Sterling:** I am going to refuse unanimous consent. I would rather deal with the amendment and then she can move a motion to strike the amended section. I would prefer it that way.

**The Chair:** Okay, we'll deal with the PC motion first. Further discussion? Seeing no further discussion, we'll proceed to the vote on the PC motion on clause 23.1(b). All those in favour? Opposed?

Motion agreed to.

**The Chair:** Now the Liberal motion. Mrs Sullivan.

**Mrs Sullivan:** Following precisely on the argumentation put forward by Mr Wilson, it's clear that we're both concerned about this section. As a consequence, I would like to move this motion.

**The Chair:** Mrs Sullivan moves that subsection 23.1(b) of the bill, as reprinted to show the amendments proposed by the minister, be struck out.

**Mrs Sullivan:** Once again, it's my view that this is an absolutely impossible requirement to place on a health care practitioner in whatever setting and I believe that the subsection should be struck.

**Mr Wessenger:** We'll be opposing this motion because this would destroy the whole concept of the Substitute Decisions Act as well as the whole provision for substitute consent under this act.

**Mrs Sullivan:** I don't understand that. This section refers to the refusal of consent, not to the entire substance of the bill, and it puts on to the health care practitioner a requirement that he understands, under section 14, various values, beliefs, wishes, if they can be ascertained, and whether the condition is likely to improve and so on. In fact, this has a much more limited impact than an impact on the entire bill. In this circumstance, it's an impossible requirement to place on the health care practitioner.

**The Chair:** Further discussion? Seeing no further discussion, we'll proceed to the vote. All those in favour of the Liberal motion on subsection 23.1(b)? Opposed?

Motion negated.

**The Chair:** We'll proceed to the Liberal motion on subsection 26(6).

Mrs Sullivan moves that subsection 26(6) of the bill, as reprinted to show the amendments proposed by the



minister, be amended by inserting after "been" in the seventh line "registered or."

**Mrs Sullivan:** This section relates to the application for review of the finding of incapacity not applying if the person has a guardian of the person or an attorney for personal care under a power of attorney. The recommendation is that the attorney could be registered or validated under the act.

**Mr Wessenger:** We will be opposing this bill because, again, we had this discussion, this motion, with respect to the question of the meaning of "validation." Validation does include a power of attorney which has been registered and subsequently validated by an assessment. If this motion were to carry, in effect, we would prohibit any person from challenging a decision of the attorney under a power of attorney which had not been validated so that the individual would have no access to the board of review. It would take away substantial rights.

**The Chair:** Further discussion? Seeing none, we'll proceed to the vote on the Liberal motion on subsection 26(6). All those in favour of the motion? Opposed?

Motion negatived.

**The Chair:** On the government reprint, subsection 27(3), paragraph 3. Agreed? Carried.

Okay, PC amendment on subsection 28(1).

Mr Jim Wilson moves that subsection 28(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by inserting after "treatment" in the fourth line "or the health practitioner who proposed the treatment."

**Mr Jim Wilson:** The rationale is that the act fails to allow practitioners access to the board under section 28 in order to obtain direction with respect to the applicability and clarity of the incapable person's instructions or wishes. We think it's an extra tool the practitioner should have at his or her disposal in order to carry out both the principle and spirit of this act.

**Mr Wessenger:** We'll be opposing this motion. It's the substitute's decision, not the practitioner's, with respect to the matter of consenting to health care, and it's the substitute who has to apply the responsibility for applying the criteria, not the health practitioner. We don't see any reason for the medical practitioner applying for directions because it's not the medical practitioner's decision.

**Mrs Sullivan:** I am concerned that in some instances in fact the practitioner can proceed to treat without consent, or there may be circumstances where the health practitioner is unsure if there is consent. If there is a jumbling of the expression of the wishes, which is very clear here, we have an obligation for the health practitioner to not proceed with treatment unless, in good faith and with reasonable grounds, he believes that consent has been given. For clarification to the health practitioner, where in many cases there may not be a substitute decision-maker who's at hand to interpret wishes and where the statutory guardian may not have the extent of information to interpret those wishes, I think it is rational for the practitioner also to be able to apply and we'll be supporting this amendment.

**The Chair:** Further discussion? Seeing no further discussion, proceed to the vote on the PC motion on subsection 28(1). All those in favour? Opposed?

Motion negatived.

**Mrs Sullivan:** Mr Chairman, are we at the government amendment 28(2) and (3) at this point?

**The Chair:** No. We're going to do the government reprint on subsection 28(1) first.

**Mrs Sullivan:** Okay.

**The Chair:** Proceed to the government reprint subsection 28(1). Discussion? Seeing no discussion, proceed to the vote. All those in favour of the government reprint subsection 28(1)? Opposed? Carried.

PC motion on paragraphs 28(2)1, 2 and 3.

**Mr Jim Wilson:** Mr Chairman, I'm wondering if we could just take about a three-minute break or stand this down for a moment. We want to confer for a couple of minutes on this particular amendment in light of some information we learned last night.

**The Chair:** This committee stands recessed for three minutes.

The committee recessed at 1104.

1118

**The Chair:** I call this meeting back to order. After these discussions, could I ask you where we are then?

**Mr Jim Wilson:** We will not be introducing the PC motion dealing with paragraphs 28(2)1, 2 and 3. The simple rationale for not introducing it is that our previous amendment unfortunately failed and it just wouldn't make sense to try and introduce this motion, so we'll withdraw it.

**The Chair:** On the government reprint on paragraph 28(2)3.

**Mrs Sullivan:** I wanted to speak to this amendment for a minute or two. This is one that I have discussed with the counsel to the Ministry of Health and where there is some concern among health care providers. I think the concern relates to the fact that including the health practitioner as party to the application has created some confusion, and indeed I shared that.

In some initial work on the bill I attempted to propose a method whereby the practitioner could be called as a witness or could make a submission. Indeed I understand that this act is subject to the Statutory Powers Procedure Act, although it's not spelled out, and in fact I'm told that it's not necessary, although I still think this would be a useful amendment and may well bring it forward.

But I'd just like to read into the record, so that there won't be misunderstanding.

The legal opinion which came back to me from the Ministry of Health's legal counsel with respect to this question says:

"Under the Consent to Treatment Act, an individual has the right to have the Consent and Capacity Review Board review a health practitioner's finding of incapacity and a substitute decision-maker's decision to admit an incapable person to a hospital, a psychiatric facility or other



prescribed health facility for treatment. In addition, a substitute decision-maker can apply to the CCRB for directions concerning an incapable person's wishes with respect to treatment and for authorization to override such wishes. The Consent to Treatment Act makes a health practitioner a party in respect of all of these applications.

"The Statutory Powers Procedure Act applies to the CCRB hearings which have been convened to deal with the above applications. Under the SPPA, a party has the right to be notified of a hearing, represented by counsel, to examine and cross-examine witnesses and to present arguments and submissions. Such extensive rights are not granted to witnesses. For example, counsel representing a witness is entitled to advise the witness of his or her rights but cannot take any other part in the hearing without the tribunal's approval. Where a party has received notice of a hearing but fails to attend the proceeding, the hearing may proceed in that party's absence and the party is not entitled to any further notice. The SPPA does enable a tribunal to issue a summons to any person, including a party, to appear as a witness for the purpose of giving evidence relevant to the subject matter of the hearing.

"It should be noted that a physician is named as a party in certain review proceedings under the Mental Health Act. It is advantageous to provide in the Consent to Treatment Act that a health practitioner is a party to certain proceedings. Absent such a provision, a practitioner wishing to participate in a proceeding would have to prove that he or she is entitled by law to be a party. Further, a practitioner has significant rights as a party that are not afforded to those entitled to participate as a witness only."

I think it's important to put that opinion on the table and to clarify for those practitioners who raised the issue in committee: The Ontario Dental Association and the college of dentistry both said, "Does this mean that a dentist would have to appear before the review board when a submission or legal representation may suffice?" The questions that I raised brought this opinion: It's clear that, in every circumstance, the practitioner himself or herself would not have to appear in person. In some cases, depending on the issue, the board may believe that a submission would suffice. In other cases, counsel could appear at the hearing.

I appreciate the time that counsel in the Ministry of Health took to do the opinion for me and I think that should be shared, so that there will be no misunderstanding among practitioners about what their obligations are in terms of being a party before the board.

**The Chair:** Further discussion? Seeing no further discussion, we will proceed to the vote on the government reprint on paragraph 28(2)3. All those in favour? Agreed? Carried.

Discussion on government reprint on section 29. Do we have unanimous consent for a PC motion on section 29.1? Agreed?

**Mr Wessinger:** To move it, yes.

**The Chair:** Unanimous consent to move it?

**Interjection:** Yes.

**Mr Mark Morrow (Wentworth East):** What happened to the government reprint?

**The Chair:** It's the whole section, so we won't vote on it. This is just for discussion.

Mr Sterling moves that section 29.1 of the bill, as reprinted to show the amendments proposed by the minister, be struck out.

**Mr Sterling:** This section appears to undo a lot of the work that was put forward in Bill 108 with regard to what we call a Ulysses clause, which we talked about before. It seems that we set up, under Bill 108, a structure whereby a relative who wants to treat, for instance—the most familiar case we have heard about in this committee—a schizophrenic patient, normally a daughter or a son, goes to the court, gets guardianship of this particular individual, wants this individual treated and wants to admit this particular individual to a hospital, either a psychiatric hospital or a normal hospital.

In spite of doing all those things and the safeguards we have in Bill 108, either when you go to court for that guardianship or when you validate a power of attorney under Bill 108, we are now saying under Bill 109 that we're emasculating that authority by saying: "If the person who is incapable now complains, we're going to review the whole thing over again. We're going to go back through the whole process again. We're going to provide another review process as to whether or not this person should be admitted to the hospital."

You already have to deal with the Mental Health Act, and we've dealt with a close scrutinization of who this guardian is. This guardian has to put forward a plan of care for this person when he validates the power of attorney in front of the official guardian or before the court. So the limitations are already placed upon this guardian as to what he or she can do in order to take care of, normally, his or her son or daughter or sister or brother, and in a lot of cases we're dealing with the specific disease of schizophrenia.

I just think it's going to discourage and make the life of those kinds of people who need treatment more miserable. If we have provided under Bill 108 an opportunity to have these people treated as the official guardian sees as reasonable or the courts see as reasonable, why are we, in Bill 109, gutting basically what we've done in Bill 108?

Maybe we would have been better off then not to put any of the stuff in Bill 108, because I think that in every case, because of the nature of that particular illness, schizophrenia, you're going to have every schizophrenic patient taking advantage of section 29.1, delaying treatment, and you're going to make it very difficult to get these people under proper care. That's what I put forward as why I think 29.1 should be wiped out of the act, and I really hope the government will give that serious consideration.

**Mr Wessinger:** We will be opposing this motion on the basis that it's a balancing of rights. However, I think I will indicate that we're going to have counsel take a look at perhaps the narrow situation of the Ulysses contract to see if something can be worked out that might be appropriate in



those circumstance with respect to Bill 108 and this act. As I say, we'll be opposing this particular motion, but we're having counsel take a look at the situation with respect to the Ulysses contract.

**Mrs Sullivan:** I suppose that's some reassurance, but not a lot. I agree wholeheartedly with Mr Sterling in putting forward this amendment. I think this recommendation was also included in the Ontario Hospital Association recommendation. Their conclusion was as ours was and certainly as Mr Sterling's was, that this provision of this bill nullifies the power of attorney and defeats the purpose of the Ulysses wills. We think it shouldn't be here and we'll be supporting this amendment.

1130

**Mr Winner:** Just a couple of points: I concur with what Mr Wessinger has already said, of course, but I note with some interest that subsection (3) provides that the decision to admit the person to the facility may take effect, and the treatment may be administered, pending the determination of the application.

I seem to recall, I believe it is under section 33 or 35 of the Mental Health Act, that if there were an appeal of a substitute consent to treatment decision, the treatment couldn't go ahead until the appeal avenues had been exhausted. That may have been changed. That really did tie the hands of the people seeking to treat a patient, whereas here it appears the decision to admit and the treatment may be administered pending the determination of the application.

I don't think this in any way emasculates the role of the substitute decision-maker. There has to be some accountability. Substitute decision-makers aren't always perfect, and having a review board composed of whoever—a lawyer, a psychiatrist and a lay person—may be not only a safeguard but may provide some relief to a substitute decision-maker who might wish to have his or her decision validated by a review board and therefore add a little additional weight to it.

I think it's a good safeguard to have, where you're contemplating some very intrusive interventions, first of all, admitting the person to the facility, possibly against his or her will, and then treating. So I think this is not in any way diminishing the role of the substitute decision-maker. It may enhance it.

**Mr Sterling:** I think we also have to be practical in terms of time, in terms of the physicians involved, the health care providers, the psychiatric hospital, the hospital. What purpose does this serve? You say the treatment can continue. I'm glad that section's in there, but if the admission sticks and the treatment continues, what is the purpose of this review if there is a parallel appeal being made under the Mental Health Act, which I think in 99% of these cases the patient would have? All you're doing, in my view, is making more work and not really providing an additional right for anybody.

**Mr Winner:** With respect, I wouldn't mind hearing from Mr Sharpe on this, because I suspect there is a very important role the review board procedure can play here.

**Mr Gilbert Sharpe:** Historically, there's always been some question legally as to whether a substitute, a family member, can sign his loved one into a hospital in order to get the treatment he needs. The Public Hospitals Act, for example, talks about substitute consent to treatment in the hospital, but it doesn't talk about how you get them in if they're incompetent to admit themselves.

I guess the practice has been just to sign them in and no one's questioned or perhaps challenged that. But when we were developing the legislation, the issue arose: What if the person doesn't want to go into the hospital or the nursing home or whatever the treatment setting is? Should they be forced in? It's a form of committal. If it were the Mental Health Act, of course, they'd have to meet certain stringent criteria and have rights of review and so on.

The thought was, "We don't want to prevent the care." This isn't just subsection 22(9), where it's an emergency; this is section 19 as well, where it's just ordinary care. The person is seen to be incapable by a health professional and then the substitute, in getting him the treatment he needs in a hospital, is given the authority to sign him into hospital even if he's got—well, now they're there. They don't want to be there and they don't feel it's appropriate, so we felt it was fair to give them a right of review. Now that they're in hospital or a nursing home, wherever they are, if they still feel that they don't want to be there—they've kind of been committed, from their perspective; they didn't want to go in in the first place and they were forced to simply by a signature of a relative—they'd have access to the board.

The Ulysses contract concept wasn't there, of course, when we originally were conceptualizing this, and it may be that for people like a chronic schizophrenic who contemplated in advance that he or she may have to be readmitted a series of times and specifically recognized that in his power of attorney, perhaps that should be an exception to this process so that if he's done that, then he doesn't have a further right to go to the board, although the criteria under subsection (4) of the section, clause (d), say, "the person's views and wishes." I imagine that even there, with the Ulysses contract, the appeal would be quickly disposed of by simply saying, "Their views and wishes are set out in this power of attorney and there they are." Whether or not that would be determinant I don't know.

We saw this as an important facilitating measure to make sure that in the usual course, family members could authorize the admission of their loved ones to appropriate health care settings to quickly get them the treatment they need and that treatment should proceed. But if they don't want to go, we shouldn't look on this as a way of railroad-ing them in in cases where perhaps there has been some abuse, where family members acted a bit hastily. It was seen as a safeguard for those people who object to the admission, given that it's really such a loose mechanism, with no kind of formal committal standards or anything, or any procedures or any other safeguards.

**Mrs Sullivan:** Once again, I'm very concerned with the explanation of counsel when you look at the situations to which this section would apply. A child who has been determined to be incapable of making a decision and a parent has taken that person to the hospital on the recommendation



of the physician for treatment, while the treatment may commence, could launch an appeal to the board for a review of what is a normal process in family life.

We had before us instances and examples of the Alzheimer patient who, once in a nursing home, says, "I want to go home," and when taken home says, "I want to go home." What kind of an objection is that, and could an appeal be launched in those circumstances?

I think there is a clear override of the power of attorney in this section and I think subsection (3) of this section is really small compensation for the difficulties this entire section is going to bring to not only treatment of mental illness but of physical difficulties as well.

We talked, I think yesterday, about the drug addict who may be taken to a place by a substitute decision-maker for treatment and who may protest. Clearly, that person isn't going to have a chance if the objection is expressed in a way that launches an appeal.

**Mr Sterling:** There may be some argument with regard to putting somebody in a hospital which is not confined by the Mental Health Act, as I understand it, but why would section 29.1 include a psychiatric institution, a psychiatric facility? Doesn't the Mental Health Act already give a right of appeal in terms of the admission, even though they have a substitute decision-maker?

**Mr Winner:** I've got the section I think you're referring to of the Mental Health Act, but that's dealing with someone who's deemed incompetent to consent to treatment, and there's appeal procedure there. Here we're also dealing with admittance in the case.

**Mr Sterling:** Under the Mental Health Act, you have a right to appeal your admission to the psychiatric facility.

1140

**Mr Winner:** Of course.

**Mr Sterling:** So you're not doing the same thing.

**Mr Winner:** Your point is, why do we mention psychiatric facility here when there are remedies available under another statute?

**Mr Sterling:** Yes.

**Mr Winner:** Again, I'll have to ask counsel.

**Mr Wessinger:** Yes, I think it would be helpful to have counsel clarify here again.

**Mr Sharpe:** The Mental Health Act review of admission deals only with committal, involuntary patients who are committed by a doctor. The only other ability to ask for a review would be young people between 12 and 16 who are signed in by their parents. They can ask for a status review on many of the same criteria as exist in subsection (4) of this provision and that's being replaced by this. But the law is very unclear as to whether a family member can sign a voluntary patient, so to speak, into a psychiatric facility.

If someone has chronic schizophrenia and is now incapable of making decisions, his nearest relative or substitute under the Mental Health Act does not have clear authority to sign him in. For years we've been advising that Ontario Friends of Schizophrenics approach a lawyer to

obtain committee of the person under the old Mental Incompetency Act, which we know is very difficult and expensive. That's one of the main reasons for 108, but that's been a very difficult hardship for those people to deal with. This provision will now allow, even in situations of objection, the relative to sign a person into a hospital that will then permit a review by the person once he's in.

But there's no provision currently in the Mental Health Act that affords a patient who has not been committed but has been signed in by a relative a chance to ask for an appeal. As I say, I think from a legal perspective, that authority does not exist in any event, unless they've obtained committee or guardianship. The only real appeal of status in the Mental Health Act now would be, if they've been committed by a doctor, then they can go to the review board, or if a young person has been signed in by a parent, a person under 16, 12 or older, then there are the competency reviews. Of course, if someone's found incapable, he can ask for a review of that, but that really doesn't deal with admission of a voluntary patient.

**Mr Sterling:** I guess what I'm asking for is, if you feel it's necessary to cover that situation, can we not exclude those guardians and attorneys for personal care who have gone through the validating process under Bill 108 or have been appointed guardian by the official guardian and put forward a plan, they've checked the competency basically of this guardian? Can we take them out of section 29.1 in order to not duplicate the process and can we take out those patients who have been committed under the Mental Health Act so that again we're not duplicating the process, we're not tying the hospital up, we're not tying everybody up in terms of another process which we may not need?

Maybe I'll stand down this motion, and perhaps counsel and the parliamentary assistant could have a look at it and perhaps we can come up with a workable solution.

**The Chair:** Do we have unanimous consent to stand this one down? Agreed? It's stood down.

Any discussion on the government reprint on section 30? Agreed? Carried.

Government motion on subsection 31(1), French version.

Mr Wessinger moves that the French version of subsection 31(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by,

(a) striking out "n'est pas représentée par un avocat" in the fourth line and substituting "n'a pas de représentant en justice"; and

(b) striking out "faire représenter la personne par un avocat" in the third and fourth lines of clause (a) and substituting "que soient fournis à la personne les services d'un représentant en justice."

**Mrs Sullivan:** Is this amendment to avoid confusion with the Advocacy Act?

**Mr Wessinger:** I'll have to ask legislative counsel on that one.

**Mr Beecroft:** The purpose of this amendment is simply to ensure that the French version of this act is the same as the English version.

**Mrs Sullivan:** And the advocate isn't mistaken for the avocat under the Advocacy Act?

**Mr Beecroft:** No, there's no confusion about that.

**The Chair:** Further discussion? Seeing none, we'll move to the vote.

Motion agreed to.

**The Chair:** Next is the government amendment on the French version of subsection 31(2).

Mr Wessenger moves that the French version of subsection 31(2) of the bill, as reprinted to show the amendments proposed by the minister, be amended by,

(a) striking out "une personne est représentée par un avocat" in the first and second lines and substituting "les services d'un représentant en justice sont fournis à une personne" and

(b) striking out "honoraires d'avocat" in the fifth line and substituting "frais de justice."

Motion agreed to.

**The Chair:** Government reprint subsection 31(3)? Agreed? Carried.

Government reprint subsection 35(1)? Agreed? Carried.

Government reprint subsection 35(2)? Agreed? Carried.

Government reprint, French version, subsection 35(5)? Agreed? Carried.

Government reprint subsection 36(3)? Agreed?

**Mrs Sullivan:** I think we need some amendments to this section. We've had some amendments with respect to time in previous sections, moving from the seven-day period to 48 hours. I think we need a comparable amendment to this section as well. I don't think we've done those. Subsection 36(2) and subsection 36(3), if implemented, will in fact render inoperable the previous amendments with respect to time.

**Mr Winninger:** How can you have a hearing in 48 hours? Is that feasible?

**Mrs Sullivan:** We passed that.

**Mr Wessenger:** No. I will ask counsel to explain.

**Mr Sharpe:** The seven days to 48 hours that we did earlier was to ensure that, with a patient who has been given rights advice and then does nothing to exercise his right, you don't have to wait a week before you can proceed with the substitute's consent. But this is really quite different. This has to do with notices and procedures of the board itself, and these are time periods that are in force under the Mental Health Act that would be a reasonable time before a hearing can start and things of that sort.

**Mrs Sullivan:** Thank you. I apologize.

**The Chair:** Further discussion on subsection 36(3) in the government reprint? Agreed? Carried.

Discussion on the government reprint 40.1? No discussion? Carried.

Government reprint subsection 41(2)? Agreed? Carried.

Government reprint on subsections 41(4) to (7)? Agreed? Carried.

Government reprint, subsection 42(1)? Agreed? Carried.

We have a PC motion on section 42.1.

Mr Jim Wilson moves that the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following section:

"Rights adviser availability

"42.1 The Minister of Health shall ensure that rights advisers are available twenty-four hours a day, every day, to perform the obligations imposed on rights advisers under this act."

**Mr Jim Wilson:** This motion goes back to a previous motion introduced and discussed by Mr Sterling, which failed. That was an attempt by us to ensure that rights advisers are available in every corner of this province, 24 hours a day in small communities.

Mr Sterling's suggestion, which was defeated by the government, was that members of the Law Society of Upper Canada be permitted to be rights advisers and be part of this legislation in that sense. That was defeated by the government. We see no other option. If this legislation is to be effective, if its provisions are to be dealt with and used in a timely fashion, the government has an obligation to ensure that rights advisers are available when needed at any hour of the day.

There are tremendous costs involved, but the government seems to have taken that policy decision to proceed with this legislation at a tremendous cost. Our concern here and one of the reasons we were just conferring about this amendment would be something Mrs Sullivan has often spoken about, and that is, will hospitals and facilities be required to pay for these rights advisers?

That question the government certainly refused to answer. It has refused to be honest and straightforward with the public on Bill 109, Bill 74 and Bill 108 in terms of how much advocates will cost and how many there will be. The cost of running the commission has never been established or communicated to the committee or to the public; none the less, we see no option. If the government is making a commitment to making this legislation work, you have to have rights advisers available. You've refused the commonsense approach, which was to have lawyers called upon.

**Mr Wessenger:** We'll be opposing this motion for two reasons. The first is an implementation issue and, second, we provided that rights advice does not apply to emergency situations. Therefore we feel that such a 24-hour requirement would not be a necessity in any event.

**Mrs Sullivan:** We are still very concerned that we haven't heard the responses from the parliamentary assistant and the minister with respect to where rights advisers will come from, how they will be paid, how they will be trained, their availability, not only on a 24-hour-a-day basis but in communities that aren't downtown Toronto, which frankly is most of the province.

There are new rules with respect to patients' rights which are, we think, important ones, but we have to be certain that if those new rules exist, there's an adequate



way of ensuring that people have access to the application of those rules. We want more answers.

**The Chair:** Further discussion? Seeing no further discussion, we'll proceed to the vote on the PC motion on section 42.1. All those in favour? Opposed?

Motion negatived.

**The Chair:** It's my understanding that there are some important appointments coming up at lunchtime, so I think we could finish this off shortly after lunch, and then we'll be proceeding with Bill 74. This committee stands recessed until 2 pm this afternoon.

The committee recessed at 1155.



## AFTERNOON SITTING

The committee resumed at 1420.

**The Chair:** I call this meeting back to order. We will be proceeding on the government reprint, subsection 43(1). Agreed? Carried.

Government reprint 43(2). Agreed? Carried.

Government reprint 44(1). Discussion? Agreed? Carried.

Government reprint 44(2). Discussion? Agreed? Carried.

Liberal motion on section 45, Mrs Sullivan.

**Mr Wessinger:** I have one first on clause 45(e).

**The Chair:** Sorry; we have a government motion on 45(e).

Mr Wessinger moves that clause 45(e) of the bill, as reprinted to show the amendments proposed by the minister, be struck out.

**Mr Wessinger:** The purpose of this is that we no longer have prescribed health facilities under section 10 of the bill.

Motion agreed to.

**The Chair:** Liberal motion on clause 45(h).

Mrs Sullivan moves that subsection 45 of bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following clause:

“(h) prescribing the form of a notice under subsection 10(2) or (3).”

**Mrs Sullivan:** The effect of this is to require the minister to develop the forms that would be used by the practitioner in providing notice of rights to patients, the right to consult a rights adviser and the right to make an appeal to the board. The printed motion was blank in those places because I wasn't sure where they were going to end up when we were doing this, but “(2) or (3)” is the appropriate way to put it, I'm told.

**Mr Wessinger:** Yes, we will be supporting this amendment.

**Mr Beecroft:** A minor thing: Could I suggest that this clause be placed after clause (b), because (b) deals with one kind of form, this would be another kind of form and then clause (e) deals with other forms.

**Interjection:** Clause (b.1) then?

**Mr Wessinger:** Clause (b.1); I'm agreeable to that.

**The Chair:** That would be clause 45(g.1)?

**Mrs Sullivan:** Clause (b.1), I believe.

**The Chair:** Further discussion? Seeing none, we'll proceed to the vote. All those in favour of the Liberal motion?

Motion agreed to.

**The Chair:** PC motion, clauses 45(h) to (k).

**Mr Jim Wilson:** Just before I read it, I want to note that we can delete (h) as written in the motion before members and read the letter following.

**The Chair:** Mr Jim Wilson moves that section 45 of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following clauses:

“(h) establishing minimum qualifications, standards and a code of conduct for rights advisers;

“(i) establishing a review procedure for dealing with complaints from any person relating to rights advisers;

“(j) establishing training programs for rights advisers.”

**Mr Jim Wilson:** I think all members will note that this is fairly self-explanatory. It is our preference that the cabinet set out the standards, qualifications, establish the training programs and establish a review procedure for the public or any person who can bring complaints forward regarding rights advisers. We think it's important to safeguard. I don't think it should be left up to the Advocacy Commission. It's something the government should be responsible for directly as members of provincial Parliament. Certainly, our constituents will come to us and they will certainly see this as a government responsibility.

**Mr Wessinger:** We'll be opposing this amendment because we feel it's an implementation procedure, and it's certainly not the intention to prescribe by regulations with respect to these matters.

**Mrs Sullivan:** I'm puzzled by that response, because of course in Bill 74 similar provisions were included in the regulations with respect to training of advocates, and also providing a review procedure. All the rights advisers under this act will not be subject to the Advocacy Act. We've had that discussion. Although we attempted to ensure that there was a standalone bill with respect to rights advisers, that clearly is not the case. The government would not accept that. As a result, there will be a group of rights advisers who can be appointed by the minister who will have, under this act, no training, no minimum qualifications and no code of conduct. There will be no review procedure for dealing with complaints about their actions.

There's a dichotomy here. I don't understand why the ministry could not prescribe these training and code of conduct requirements and a review procedure under this act for those rights advisers for whom there is no other place for training or disciplinary review.

**Mr Wessinger:** I'll have ministry staff give further explanation in this regard.

**Mrs Sullivan:** It appears there's no answer. Maybe the parliamentary assistant would like to reconsider his opinion.

**Ms Jutta Auksi:** I guess what I'm being asked to comment on is that the regulations would not be able to establish something that isn't up front in the act, that the regulations would set out the details, not establish something new that isn't in the statute itself.

My expectation would be that if the ministry does set up separate rights advice activities, for a lot of reasons it would draw heavily on what the Advocacy Commission does in its part of the administration of the rights advice program. One wouldn't want to have completely separate and entirely different kinds of quality controls or whatever.

I don't think there's any objection to the policy that's suggested here of being able to complain about an advocate,



certainly ensuring that it's delivered in a quality kind of way, but in fact the Consent to Treatment Act doesn't have in the statute itself, as the Advocacy Act has, something to which this would just be filling out the detail.

**Mr Jim Wilson:** I don't really accept that response. This act does establish rights advisers and I think it's incumbent upon the government to ensure that there are minimum qualifications etc, as spelled out in the motion. The government wouldn't make these regulations, I hope, in a void. They would be communicating, I assume, with the Advocacy Commission. I just don't think we can let this legislation pass without having some comfort that these safeguards are contained therein. To say that what I'm suggesting in my motion doesn't refer to anything contained in the body of the act—I just don't see that.

We're talking about establishing regulations to give guidelines and a code of conduct for rights advisers, which are much a part of this act. I find it a rather lame excuse and don't accept it. I agree with Mrs Sullivan that its mind-boggling you wouldn't want to be responsible up front and ensure that this legislation contains safeguards for the public, for vulnerable people and for persons who may find themselves—which is all Ontarians—subject to this consent act.

1430

**Mrs Sullivan:** I too don't concur with the advice provided by the policy analyst. We know that under Bill 109 there are two categories of rights advisers: One group of rights advisers are those authorized under the Advocacy Act; the second group are rights advisers appointed by the minister as a member of a prescribed category in certain circumstances.

We've had an indication before this committee, because my amendment to that effect was defeated, that many of those people in the second category will not be independent of the facilities in which they work. They could be employed by a hospital, a nursing home or another facility. As this act stands now, there will be no criterion under which those people operate. They are appointed and they act. There's no code of conduct, no standards, no indication that there's any intervention of the ministry, even in terms of describing what the responsibilities are and in providing the terms of reference with respect to those responsibilities.

This amendment that has been proposed by my colleague clears that up. We certainly know and have come to trust many of the rights advisers who now operate in institutions. I think of chaplains, for example, in hospitals who provide that service from time to time, and social workers in other places. Their responsibilities here, however, are different. There is a new perspective to their responsibilities to those which they've acted upon before.

We think that at minimum the minister should be required to provide an indication of the qualifications, the standards and the code of conduct for those people exercising new duties and for people on whom those duties are being exercised, to have a method of review.

**Mr Wessinger:** I think it might be helpful to have some comment from counsel with respect to what the pro-

cedure is under the Advocacy Act, because I'd be interested to know how it's dealt with under that act so that we have some guidance to this committee.

**Ms Carla McKague:** I understand we're talking about complaints procedures. Is that correct?

**Mr Wessinger:** That's correct, yes.

**Mr Jim Wilson:** And training and qualifications.

**Mrs Sullivan:** Training, code of ethics, standards and qualifications.

**Ms McKague:** At the moment, this is still in a state of flux. We still have not totally resolved this. There are a number of motions stood down that deal with these issues. I can tell you what the situation is in the act as it reads at the moment, which is that there is a requirement—I'm just looking for the right clause here, 7(1)(k.1)—requiring that the commission "establish criteria and procedures applicable to,

"(i) the authorization of community agencies...to perform functions on behalf of the commission,

"(ii) the authorization of persons...to provide advocacy services on behalf of the commission...

"(iii) the suspension or revocation of an authorization...."

Clause (k.2) requires the commission to "establish, subject to the approval of the Minister of Citizenship, and make available to any person on request, a written review procedure for dealing with complaints from any person relating to advocates," and clause (k.3) to "provide training programs to advocates," and there are provisions for the development of codes of standard, codes of conduct for advocates. These are not at this point fleshed out in the act. Whether they will be by the time the week is over is a question I can't answer yet.

**Mrs Sullivan:** With apologies, counsel, that is totally irrelevant. We are talking about a category of rights advisers that are not included under the Advocacy Act. We know certainly the intention of the government is in fact, under that act, to use the regulatory process to develop the training and other procedures with respect to advocates. We are talking in this case about rights advisers who are not subject to the Advocacy Act and who are appointed by the minister.

**Ms McKague:** I'm sorry. I misunderstood the question.

**Mrs Sullivan:** The amendment on the table is with respect to dealing with the training, the qualifications and the standards for those rights advisers who are in category B, appointed by the minister in certain circumstances to work in certain places, and establishing also a process for dealing with complaints with respect to those rights advisers.

If an individual has a complaint with respect to a rights adviser in that particular category, there is no option for him or her in terms of requesting a review. The rights adviser may in fact be providing information and advice with respect to treatment that is totally beyond the bounds and boundary of the rights advice that the Consent to Treatment Act contemplates.

Without any kind of a check or balance, the patient once again can have unfortunate advice provided to him on



which decisions could be made. With all the well-meaning in the world, a person could be told by a rights adviser who is named and has no other parameter around which to work that a certain course with respect to the treatment itself might be appropriate. That is clearly not what the act contemplates, and we want a mechanism to ensure that in those circumstances there is some protection for the patient and there is some information and some standards around which the rights adviser can act.

**Ms McKague:** The brief answer to your question then is that the Advocacy Act does not contain any provisions for dealing with rights advisers other than those provided through the commission process.

**Mrs Sullivan:** Precisely.

**Mr Jim Wilson:** Just to add to the debate, it also strikes me that the government has the cart before the horse here. We have in this bill all kinds of neat things for rights advisers to do, but you haven't got the guts to put down or to take the responsibility on to yourselves as a government to set the minimum qualifications and standards and code of conduct, review procedure for complaints and a training program for these people.

Having set up the new profession of rights adviser, you're leaving it out there for an independent, arm's-length Advocacy Commission to set all your standards, training and qualifications, and you're prepared to put this bill into law without really telling the public or being prepared to spell out yourselves who these people are and what their qualifications are.

I think in order to have any public confidence in this legislation, the government has to set out the minimum qualifications and standards so that people know and have some respect for the rights adviser who's infringing upon their lives, is going to see them at some point in their lives. You owe it to the future rights advisers to give them a basis upon which to build their profession.

It's just totally irresponsible to let this piece of legislation go out into orbit, as it were, leaving it up to some arm's-length commission, without taking the authority upon yourselves to set the minimum standards and show some leadership in this area. I don't think the public can expect to accept this legislation easily given that there are so many loose ends untied here.

1440

**Mr Wessenger:** In spite of Mr Wilson's rhetoric, I think we probably can live with this amendment, so I've reconsidered and think we're prepared to accept it.

**Mrs Sullivan:** Hear, hear. Good stuff.

**The Chair:** Mr Sterling.

**Mr Jim Wilson:** He has no comment any more.

**Mr Sterling:** I might argue you back, but no.

Interjection.

**Mr Wessenger:** We worked prior actually. We made up our minds before.

**Mr Jim Wilson:** I was buying you time.

**Mr Sterling:** I have no comments.

**The Chair:** Further discussion? Seeing no further discussion, we'll proceed to the vote on the PC motion on clauses (h) to (j). All those in favour? Opposed?

Motion agreed to.

**The Chair:** PC motion on subsection 45(2).

**Mr Jim Wilson:** I think this motion really follows what the government has just allowed to pass.

**The Chair:** Mr Jim Wilson moves that section 45 of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following subsection:

"Review procedure

"(2) The Ministry of Health shall provide written information about the review procedure established under clause (1)(i) to any person who requests it."

**Mr Jim Wilson:** Simply, we want to ensure that all persons who may request are provided with full information about the review procedure which they're entitled to access.

**Mr Wessenger:** We have no objection. We support that one.

**Mr Jim Wilson:** Thank you, Mr Wessenger.

**The Chair:** Further discussion? Seeing no further discussion, all those in favour of the PC motion on subsection 45(2)? Opposed?

Motion agreed to.

**The Chair:** I have a Liberal motion on section 45.

Mrs Sullivan moves that section 45 of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following subsection:

"Consultations

"(2) Before making regulations, the Lieutenant Governor in Council shall consult with representatives of persons who may be affected by the regulations."

**Mrs Sullivan:** This amendment is put on the table to ensure that there is a consultative process with respect to the implementation of this bill, with respect to the educational programs that will have to accompany it, with respect to the discussions with every health practitioner in terms of ensuring that they will understand all the provisions of this bill and that indeed, when the bill is implemented and the regulations are drafted, they are not the sham and shame, frankly, that the process with respect to the drafting of the bill itself was.

**Mr Wessenger:** We'll be opposing this amendment as we opposed a similar amendment in Bill 108. It's a matter of implementation. Certainly the matter of consultation is a matter which should be dealt with as a political rather than a legal matter.

**Mrs Sullivan:** It certainly should be dealt with in a lot more efficient and effective manner than the rest of the approach to this and the other companion legislation has been.

**The Chair:** Further discussion, Mr Sullivan. Pardon me. Mr Sterling. I apologize. It's only the second time this week.

**Mr Sterling:** Mr Chairman, I don't know who should be insulted.



I want to indicate that I'm going to oppose this amendment because it doesn't have in it that there has to be consultation with the minister, and unless we have something in writing that the public has a right to consult with the minister, even the elected representatives of the people never get a chance to consult with the minister. That's why I am going to oppose this amendment. It should be much stronger in requiring the minister to come in front of the committee and meet and consult with the people, which this Minister of Health seems so reluctant to do on this legislation.

**The Chair:** Further discussion? Seeing no further discussion, we'll proceed to the vote. All those in favour of the Liberal motion on subsection 45(2)? Opposed?

Motion negatived.

**The Chair:** Government motion on section 45.1.

Mr Wessenger moves that the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following section:

"Conflict with Child and Family Services Act

"45.1(1) If a provision of this act conflicts with a provision of the Child and Family Services Act, the provision of the Child and Family Services Act prevails.

"Repeal

"(2) Subsection (1) is repealed on the third anniversary of the date this act receives royal assent."

**Mrs Sullivan:** I'm very interested in this amendment. I think it possibly could relieve some of the concerns that have been expressed by children's aid societies and others with respect to the interchangeability of the Consent to Treatment Act and the Child and Family Services Act, and the children's aid society workers will in fact see and understand that their statutory duties under the CFSA have priority.

There are two questions I want to put to the parliamentary assistant. One is, what is the rationale for subsection (2) of the amendment? The other is, given this amendment, does the government intend to not put forward the amendments to the Child and Family Services Act which are printed in Bill 110?

**Mr Wessenger:** With respect to the first question, subsection (2) is basically at the request of the Minister of Community and Social Services, that she feels a time requirement would assist her in getting the appropriate amendments through her ministry.

**Mrs Sullivan:** And with respect to the second question?

**Mr Wessenger:** I don't think it's been decided at this stage as to what the effect on Bill 110 will be. We have to review that, assuming this is passed. There may be some sections that will be inapplicable and we'll have to look to see which ones are inapplicable and which ones are not.

1450

**Mrs Sullivan:** The concern I have with respect to your first answer is that the Minister of Community and Social Services, I assume, has indicated in an agreement that she will proceed with amendments to the CFSA which would ensure within that bill that the provisions of that act are not in conflict with the Consent to Treatment Act and

that indeed they have priority. We have no time line for the introduction of that bill and for the necessary public consultations associated with it. We understand that the interventions of the children's aid societies came late in our proceedings; they didn't come until the second round of hearings and in fact there was little information and considerable concern expressed. The question is, what if the minister can't complete her consultations and the appropriate new act is not brought forward within that three-year period? Are we creating a problem with subsection (2) included in this motion that three years hence may well be forgotten and may well create problems?

**Mr Jim Wilson:** This is a very important amendment and I would like to have spelled out, for all committee members, the areas of conflict between this legislation and the Child and Family Services Act, if that can be done by counsel. It's important we understand exactly what we are doing here because what we are doing is really forcing the Ministry of Community and Social Services to bring its act into conformity to this act. What I'm worried about is that, since I think that in some areas Bill 109 is rather a liberally worded, very much NDPish type of legislation—I'd be happy to explain that term, if you have a half-hour—we may be forcing a watering down of the CFSA. It's important we all know exactly what we're doing here, so I would ask counsel, through the parliamentary assistant, Mr Wessenger, to give us some meat on the bones.

**Mr Wessenger:** That's a question I'll ask counsel to respond to.

**Mr Sharpe:** The opinion requested of the Ministry of Health that was tabled here on August 31 took great pains to review all the provisions of the Child and Family Services Act and compare them to Bill 109. The conclusions in that opinion were that, with the possible exception of the psychotropic drugs in 132, there didn't appear to be any apparent conflicts with 109. For example, the legislation in 40(9) talks about a child care worker having the same authority to consent to medical treatment or examinations that a parent would have. If the young person were mentally competent to refuse treatment, the parent would not be able to compel that young person to take it, under common law and under Bill 109, which reflects the common law. So our view was that there was no conflict except possibly with the under 16 and psychotropic drugs and we go through a careful analysis on that issue.

But what was heard from a number of representatives of children's aid societies at the last round of hearings was that the practice may be somewhat different than that. It's just our legal opinion that there doesn't appear to be a conflict. There may be lawyers representing children's aid societies and others, such as child care workers, who hold a different view, and perhaps those views are reflected in the practice of some of these individuals. So what this provision would do, to the extent that there is an apparent conflict based on the practice with children's aid societies and child care workers and so on, is make it clear that the CFSA takes priority.

**Mr Jim Wilson:** So what one would hope would happen in the next three years is that Comsoc would sit down



and consult with the children's aid societies to further get out of them, extrapolate from them, what their view is and how they're handling this legislation. If that's the case, and I appreciate the time frame and I appreciate that there is a time frame to force Comsoc to do that, you've got my support on this.

**The Chair:** Seeing no further discussion, we'll proceed to the vote. All those in favour of the government motion on section 45.1? Opposed?

Motion agreed to.

**The Chair:** A Liberal motion on section 47.

Mrs Sullivan moves that section 47 of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following subsection:

"Limitation

"(2) Despite subsection (1), this act shall not come into force before the first anniversary of the day on which it receives royal assent."

**Mrs Sullivan:** This amendment is put forward to underline the absolute necessity of the consultation with respect to the implementation of this act. The first day that this act comes into force is going to be an in-day in terms of an educational process, an information process, an involvement of stakeholders in determining (a) the regulations and (b) how those regulations are going to be put into place.

In my view and in the view of other people, the rushing forward into the development of forms, the development of wording on forms, the educational processes and involvement of the health professions, of the facilities that are very much affected by this act and so on, cannot proceed in a hasty manner. This section provides for a year of preparation before the act would come into force. In my view it would be premature if it came into force on any day before that, and clearly the intent is an intent of involvement and careful preparation, unlike what we have seen with the rest of the parts of this bill.

**Mr Wessinger:** We'll be opposing this motion, as a similar motion was made with respect to Bill 108. I think it's a matter that should be the government's prerogative at what date the bill is proclaimed.

**Mr Sterling:** I would have hoped that the parts dealing with advance directives could be proclaimed almost immediately and therefore I find difficulty. When you proclaim the act, you don't necessarily have to proclaim all sections of it and I would find that clause restrictive in terms of in some ways setting down some formal requirements with regard to living wills and therefore I am forced to oppose this motion.

**Mr Jim Wilson:** While I appreciate and agree with much of what my colleague has just said, I am really of a different mind, though when it comes to the vast majority of the contents of these pieces of legislation and this legislation in particular, I don't think Mrs Sullivan goes far enough. I think we should have a couple of anniversaries go by before this stuff is proclaimed and hence I won't be supporting the Liberal motion.

**Mrs Sullivan:** I'd just like to point out to my friend from the third party that the amendment does say "not before the first anniversary," which could mean substantially longer.

**Mr Jim Wilson:** Well, say "not before the second anniversary."

**Mrs Sullivan:** None the less, the intent is to underline that even in the case of advance directives there will have to be education, training and bringing people up to speed. There will also have to be a funding commitment, about which we have heard not a word.

1500

**The Chair:** Further discussion? Seeing none, we'll proceed to the vote. All those in favour of the Liberal motion on section 47? Opposed?

Motion negatived.

**The Chair:** We need unanimous consent on the government reprint of the schedule, to move it. Agreed? It's a deletion. Do we have unanimous consent to have it moved? We do. Agreed. Discussion? Seeing none, all those in favour of the deletion of the government reprint of the schedule? Opposed?

**Mrs Sullivan:** Would the parliamentary assistant like to speak to this?

**Mr Wessinger:** Speak to what?

**The Chair:** The deletion of the schedule.

**Mr Wessinger:** I have to find what was in the schedule.

**Mrs Sullivan:** That's why we want you to speak to it.

**Mr Wessinger:** Evidently, the schedule dealt with a definition of "health practitioner" and the schedule was removed because it's no longer necessary due to the changes to the definition of "health practitioner." That was when we listed all the items. We took it out of the schedule and put it in the act. That's the reason for that.

**The Chair:** All those in favour of the deletion of the government reprint of the schedule? Opposed? Carried.

We'll go back to the ones we stood down. On the government reprint 1(1), is there discussion?

**Mrs Sullivan:** Why was this stood down?

**Mr Wessinger:** The reason it was stood down, I understand, is that there were some amendments with respect to the definition of treatment. It was stood down until those amendments were dealt with. There were some amendments.

**Mrs Sullivan:** To 1(1)?

**Mr Wessinger:** Yes.

**Mrs Sullivan:** I don't like the fact you didn't take my amendments.

**The Chair:** You're right. They were defeated in the process. Seeing no further discussion, we'll proceed to the vote. All those in favour of the government reprint on subsection 1(1)? Opposed? Carried.

Next is the Liberal motion on subsections 10(2) (3), (4), and (5).

**Mr Sterling:** I thought we stood down section 4.



**The Chair:** That's an entire section that was stood down.

**Mr Sterling:** We're not going through it?

**The Chair:** We aren't voting on whole sections.

**Mr Sterling:** Oh, we're not? Okay.

**The Chair:** No, we've agreed to keep all sections open until the end of clause-by-clause on all bills.

**Mr Sterling:** My apology, Mr Chairman.

**The Chair:** Thank you, Mr Sterling.

There was a Liberal motion. No, that wasn't even moved, was it? Sorry.

**Mrs Sullivan:** Mr Chairman, I believe that with the redrafting of subsections (2) and (3) and the amendments that were proposed, this amendment becomes redundant. If I find differently, however, I will file it before the end of the session.

**The Chair:** So you'll withdraw that then?

**Mrs Sullivan:** Yes indeed.

**The Chair:** It was alternate 2a, and the last one that was stood down was the PC motion on 29.1, moved by Mr Sterling.

**Mr Sterling:** My motion, as you remember, was to delete 29.1, and my basic objection to 29.1 was that it was going to provide a duplication of the right of a person who is incapable to challenge the fact that he or she was being confined against his or her will either in a hospital or in a psychiatric facility.

I think during the discussion this morning there was not a clarity, or it was not clear to me the differences with regard to what was happening with regard particularly to a patient who had given a power of attorney which was validated under Bill 108 or a guardian who was appointed under Bill 108. It was not clear to me that those people are then deemed to be voluntary patients and therefore do not come under the Mental Health Act and don't have any protection or procedure as to whether or not they should be kept in that institution even though it was against their will.

If this interpretation which Mr Fram gives to me is correct, if that's the understanding, then I do not object to 29.1, because it in fact then gives these individuals an opportunity to have their "incarceration," if you want to call it that, questioned or appealed. I accept that. I am assured by Mr Fram that no one would be committed under the Mental Health Act if he or she was acting under Bill 108. Is that correct?

**Mr Wessinger:** I guess we should ask Mr Fram, to give him an opportunity just to confirm on the record.

1510

**Mr Steve Fram:** The Mental Health Act—and Gilbert is clearly the expert here—allows involuntary detention under very specific terms for very specific purposes and essentially uses the police power to protect society against someone who's dangerous to it, or to protect the person against an imminent danger to himself or herself.

The thrust in Bill 108 is to say that's okay for society, the Mental Health Act, but that's not much good for the

individual. If somebody's incapable or has episodes and wants to take care of himself by making out a Ulysses contract under section 50 and give authority to an attorney, the attorney with a validated power is taking him to a place for treatment and the standards the person will have if he goes to a psych facility are those of a voluntary patient, just as though he went to any other kind of facility. It's somebody making a substitute decision for them.

Similarly, with a guardianship order that provides for their being taken to a psych facility, the safeguards of the Mental Health Act—that is, the tests to get out—don't apply. They're there to be treated and if the power is there to detain them and restrain them there during treatment, then they're going to get that treatment whether they like it or not. This provision is the only one that will allow the review of their admission. That's the way I understand the provision.

**Mr Sterling:** Maybe back in my law days I might have gone into that length of an explanation, but the question was: Is there any duplication? Is there any chance of duplication of process under section 29.1 in the Mental Health Act?

**Mr Fram:** I don't see duplication for those patients you're concerned about.

**Mr Sterling:** Do you see duplication for any patients I'm not concerned about?

**Mr Fram:** I'm not sure how section 29.1 will apply to a person who is involuntarily incarcerated, who meets the criteria of the Mental Health Act. Will this give another route to get before the board? I can't answer that question. Their admission, it seems to me, doesn't come on the consent of another person, so that may be the basis of distinguishing and saying there isn't duplication. I think Gilbert can answer that question much better than I.

**The Chair:** Could we have legal counsel respond first?

**Mr Beecroft:** I was just going to say that a person who is involuntarily committed to a psychiatric facility under the Mental Health Act is not there because of a decision to consent to his admission made by a substitute decision-maker.

**Mr Sterling:** Yes.

**Mr Beecroft:** All that section 29.1 allows a challenge of is a review of a decision to consent on the person's behalf to the person's admission. No one has consented on the person's behalf to his admission if he's being involuntarily admitted under the Mental Health Act. That would be my interpretation.

**Mr Sterling:** I guess the question mark seems to be the voluntary patient who goes in and then questions. Is that the grey area we're talking about now, the schizophrenic patient who decides he does need some help and goes voluntarily to a hospital and then decides he wants to challenge the fact that he's remaining there? No?

**Mr Wessinger:** I think perhaps I should ask legal counsel to respond to that.

**Mr Sterling:** Is there a grey area? I'm not getting a clear answer here.



**Mr Sharpe:** Lawyers aren't trained to give clear answers.

**Mr Sterling:** I know. Politicians are paid to try to get them.

Interjections.

**Mr Sharpe:** It is possible that someone could be admitted to a psychiatric facility as what we call an informal patient, which means that he wasn't capable of making the choice himself but was signed in by a guardian, and under Bill 109, section 29.1, decided to question that and then would have the review. They would apply and have their hearing under 29.1 by the review board, and subsequently—I can't imagine this happening, but it's theoretically possible—the review board might decide to let them go. The doctor in the hospital would feel that it would be dangerous to do that or they couldn't look after themselves or whatever and theoretically could fill out a committal form on them, and pursuant to that form 3, they would then be entitled to a further review by the review board, but this time under the Mental Health Act. Carla?

**Ms McKague:** I was just thinking it might be helpful to Mr Sterling to know that there's a variant of this procedure already in the Mental Health Act in the case of children between 12 and 15.

**Mr Sharpe:** We went through that this morning.

**Ms McKague:** Yes. Those reviews don't occur often, but they have been successful occasionally. It's not a question really of safety or danger; it's a question of whether there's really a need to go so far as to confine someone to a hospital or whether there's a less intrusive way of providing the needed care.

**The Chair:** Mrs Sullivan, have you been waiting to speak on this?

**Mr Sterling:** I withdraw.

**Mrs Sullivan:** I have.

**The Chair:** Mrs Sullivan.

**Mr Sterling:** Oh, sorry.

**Mrs Sullivan:** I'm interested as much in the decision of the substitute who is making a decision to admit the person to a hospital for physical illness as I am in terms of the mental illnesses Mr Sterling has been pursuing. I raised earlier the question of the 13-year-old child with a spinal malformation on whose behalf the parent, as substitute decision-maker, has agreed and consented to a course of treatment within an institution and subsequently to the admission to that hospital. The objection of the 13-year-old to being in the hospital in fact could trigger an appeal, and while the treatment may be administered, the full course of treatment may not be administered, although the child, in order to have the substitute kick in, has previously been determined to be incapable of making that decision.

I think this is really a problematic section. I also see a similar circumstance with an Alzheimer's patient. A person is incapable or a substitute wouldn't be acting.

**Mr Sterling:** I'm satisfied that the section should stay in and I want to withdraw my motion.

**Interjection:** Oh, after all that.

**Mr Sterling:** I need, really, unanimous consent in order to do that, and maybe Mrs Sullivan would still like to vote on that motion. I'm not certain. Is that not correct?

**The Chair:** You don't need unanimous consent.

**Mr Sterling:** Okay, fine. I thought I did.

**The Chair:** Further comments on Bill 109? Seeing none, this committee will stand recessed for a short five minutes to prepare for Bill 74.

The committee recessed at 1519.

1555

## ADVOCACY ACT, 1992

### LOI DE 1992 SUR L'INTERVENTION

Consideration of Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Loi concernant la prestation de services d'intervention en faveur des personnes vulnérables

**The Chair:** I call this meeting back to order. We will be continuing now with clause-by-clause consideration on Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons.

I'd like to make an announcement first that a letter has been handed out from the three House leaders extending time limits for all committee members present.

**Mr Winninger:** I would like to withdraw a motion I moved in the absence of Mr Malkowski at the earlier stage of clause-by-clause, because I know there's a replacement government motion that will be moved. I would like to withdraw the earlier amendment I moved to section 8.1.

**The Chair:** Thank you. We'll be continuing where we left off on the Liberal motion, subsections 26(3) and 26(4). This has already been moved by Mrs Sullivan. Discussion?

**Mrs Sullivan:** This motion relates to limitations on an advocate's access to records in a facility or institution. The limitations would mean that the advocate would not have authorization to obtain records that relate to health education, for a course of study, a program or investigation or research that are carried on by a facility, the information and documents that are compiled and used to improve hospital care or medical practices, records relating to complaints that are made to a college that regulates a health profession and information that relates to persons other than vulnerable persons.

The only exception to this would be that the advocate could have records relating to the complaints if the person who is making the complaints provided a consent.

We clearly want to ensure that hospitals and other facilities where records are kept and where information is used for peer review or for other purposes do not become broadly available to advocates, and that the advocate's access to records is limited to the individual and to the purposes that are very specific to his or her duties.

**Mr Jim Wilson:** I just note that I think I'm correct in saying that we have introduced a motion that's very similar to this Liberal motion. I would really just echo what Mrs Sullivan has said and indicate that we will be giving very strong support to this motion.



**Mr Gary Malkowski (York East):** We will not be supporting the Liberal motion. This runs almost exactly counter to the new proposed government amendment adding section 25.1, and there will be a replacement.

**Mrs Sullivan:** The government motion 25.1 was stood down. That motion related to documents of general interest, including policy manuals and so on. That motion, which I understand has gone back for redrafting and additional clarification, has absolutely nothing to do with the issues that are before us and contained in my proposed amendments to subsections 26(3) and (4).

The issues that are included in subsections 26(3) and (4) are related to specific medical and hospital procedures with respect to research documents, with respect to peer review and with respect to quality management within the institution, and are quite separate from documents which are associated with an individual, to which the advocate under other sections of this act generally has entitlement.

The government motion bears absolutely no relationship to the issues that are included in my motion. The quality management issues at a hospital include general review of approaches to patient care on a team basis. To include those records as part of the general records that an advocate is to have free access to is ludicrous. Every single institution is deeply concerned. The question of the quality management programs and peer review programs continuing in an open and careful way, professional to professional, with open access by an advocate to those records is of some concern.

In fact, the trusting nature and the interrelationship of those peer review efforts are jeopardized by this open access to records with respect to quality control, to peer management and for medical and health education purposes. Certainly, the files within a college with respect to regulatory and disciplinary functions of the college bear little or no relationship to the requirements and needs of records that an advocate has. There should be some protection for those institutions. This is the approach that should be taken in providing that protection.

**Mr Jim Wilson:** I certainly agree. As section 26 appears in the reprint, there aren't sufficient safeguards. The only safeguard is subject to the Freedom of Information and Protection of Privacy Act. Because of the type of information we're using in quality management programs of a hospital, for example, or records relating to a regulated health profession and the complaints in a regulated college, and particularly point 5 in the Liberal motion, which is the same as the PC motion, "Information relating to persons other than vulnerable persons," what business is it of advocates to go around perhaps seeking sensitive information on individuals? That's not their role. If we allow the bill to stand as reprinted, it certainly gives them excessive powers in terms of information.

It goes back to the debate we had when we in this committee were shut down on this piece of legislation. That centred around the importance of privacy and the importance the public places on protection of privacy and protection of confidential information and documentation about persons. I think it's a very reasonable amendment. If

the government won't accept it in whole, I hope it would at least compromise and accept it in part.

**Mrs Sullivan:** If there is any understanding in this ministry with respect to the efforts that are being made within the hospital sector to improve the approach to patient care, the involvement of team management in doing that, this amendment would be accepted without any question. Clearly, that understanding doesn't exist. The sharing of information and workload, quality-control measures and real attempts to improve not only patient care but delivery of service in a cost-effective way are being made. The records associated with that approach, for the most part, do not relate to individual persons to whom an advocate is providing advocacy services and should not be available in a general way to that advocate. These are internal documents. I tell you that without this protection, the entire quality-management approach is threatened.

**Mr Malkowski:** I would like to respond to the Liberals' concerns specifically about paragraphs 4 and 5. I would ask the staff to explain those points.

**Ms Linda Perlis:** Paragraph 4 in the motion relates to records relating to complaints made to a college that are not currently accessible under Bill 74, as the college is neither a facility nor a controlled-access residence nor a program under the act. So paragraph 4 is already dealt with.

I believe section 27 adequately covers the points of concern in paragraph 5, as an advocate under paragraph 2 of section 27 is not entitled to have access to any personal information relating to an individual other than the vulnerable person without that person's consent.

**Mr Morrow:** I guess I would need all-party agreement on this, but I would be very agreeable to stand this one down.

**The Chair:** Do we have unanimous consent to stand this down?

**Mr Jim Wilson:** No.

**Mrs Sullivan:** We've been through this on this bill. Standing down motions means they don't come back. If I understand counsel to the Ministry of Citizenship, the records relating to complaints to a college are not included in any way in this bill. I have some concerns about that deduction, because indeed the records relate to an individual and the case can be cited.

I will want to refer, re paragraph 5, to ensure that those issues are in fact covered by the bill. However, am I given to understand, with the response from counsel, that the government would be interested and willing to accept the first three paragraphs of my motion, which are key and important clauses with respect to quality control, peer group review in a hospital and other institutions? I see a nod from the parliamentary assistant to the Minister of Health. I think he concurs with that.

**Mr Jim Wilson:** It will be interesting to see if we can get agreement with the government on this. With the committee's indulgence, I want to read from a second submission by the College of Nurses of Ontario that's dated yesterday. It says:



"A major thrust of both the Regulated Health Professions Act and the report of the steering committee on the review of the Public Hospitals Act is the requirement for quality assurance or quality improvement programs. Both also recognized that quality improvement programs cannot be implemented unless the individuals or institutions involved are able to undertake such exercises without fear that the outcomes can be used against them. Confidentiality of records, with some limited exceptions, is provided under the Regulated Health Professions Act and proposed under the Public Hospitals Act. The wide access accorded to individual advocates and the commission runs counter to the direction and emphasis reflected in the government's focus on ensuring that quality management and improvement activities are put into place.

"Additionally, individuals making a complaint to a regulatory body may not wish records in the control of a health facility relating to their complaint to be accessed by the commission. Allowance must be made for health care facilities to ensure that records relating to regulatory complaints are not released without the complainant's consent."

It goes on to mention a couple of other points in this regard. I think they're very clear on that. I would welcome the government's comments on those few words of advice from the College of Nurses of Ontario.

1610

**Mr Malkowski:** Because of the recent explanation by staff, and we were talking about the new amendment to try and address some of the concerns, we believe the documents are appropriate so the advocates can have access so that they can do their work.

**Mrs Sullivan:** Could I have a clarification of that from counsel?

**Ms Perlis:** I'm sorry; I've sort of lost the train. I was chatting with Mr Malkowski while you were quoting from the college document, so I would need you either to hand it to me to read, if you want a clarification on that point specifically, or to read it again. I hesitate to ask you to do that

**Mr Jim Wilson:** I'd be happy to do that. In Mr Malkowski's response perhaps could you can point me to—there's a new government amendment dealing with this section?

**Ms Perlis:** There is a government amendment to section 25.1, which was stood down and will be replaced with another motion. That deals with documents of a general application, and that has been redrawn by legislative counsel and will be circulated in due course.

**Mr Wessenger:** It seems that there's a government motion coming dealing with this question of access to information. It would be very helpful to see it before we deal with Ms Sullivan's motion. It is something like working in a vacuum here without seeing what the government's motion is with respect to documents of general information.

**Mr Jim Wilson:** When will that motion be ready?

**Mr Wessenger:** I know Mr Morrow said this should be stood down. It seems to me that—

**Mr Jim Wilson:** We're running out of time.

**Mr Wessenger:** I realize that, Mr Wilson, but it seems to me—

**Mr Jim Wilson:** There are two hours left, and we've been through this before. You should have had your motion ready.

**Mr Wessenger:** It would be helpful, I know, for me as a committee member to have seen the other motion, looking at it with Ms Sullivan's motion.

**Mrs Sullivan:** This committee adjourned last week on a motion of closure with respect to this bill by the parliamentary assistant. In the course of that time, surely to goodness, the government has had time to get its act together. The amendment to 25.1 was stood down last week. There is no amendment coming so that we can discuss it. The amendment that was stood down bears absolutely no relationship to the amendment I have on the table, which relates to the entire question of quality improvement and peer review in hospitals. When is the government going to get its act together? We've been asked to stand this motion down for the second time because the government doesn't know what the hell it's doing.

**Ms Perlis:** I wonder if could just step in and say that the motion has been prepared. I have it available for circulation. It was not circulated. We thought we were beginning at section 26 and it related to section 25. We were going to do it when we returned to the stood-down motions. However, it obviously relates to the content of the motions we're dealing with. With your indulgence, I wonder if we could have the motion circulated at this point.

**The Chair:** We will take time to get copies.

**Mr Sterling:** I would like to ask a question about the use of information. If a vulnerable person is suing a health care provider, a health care facility etc, can the advocate go in and demand records etc of that health care institution about the vulnerable person? In other words, under our normal civil suits you have certain rights to disclosure and information. Outside of that, can the advocate utilize the powers he or she has here to give a vulnerable person more information than he or she might receive if he or she were not vulnerable?

**Ms Perlis:** In some situations, that's correct. There are provisions in the act for facilities to withhold from advocates records to which solicitor and client privilege attaches, for example, and records which are the subject of law enforcement proceedings as defined in the Freedom of Information and Protection of Privacy Act.

However, it is possible that a vulnerable person, himself or herself, may not have access to a particular record as of right. The advocate would have access and would then be able to give the record to the vulnerable person which he or she couldn't access on his or her own. This area of the law of course is changing in light of the recent Supreme Court of Canada decisions in the health care field, for example, according patients a virtual right of access to their own medical files. It would mean that those files which previously an individual couldn't access on his or her own, he or she now can, and there are similar changes in the law which we'll see in the new statutes.



**Mr Sterling:** But to prove, for instance, negligence of an institution, could the commission go on a fishing trip with regard to information about all vulnerable people in that institution in order to build a case for the vulnerable person in suing the institution?

**Ms Perlis:** No. That's a short answer. In answering that, we need to have a look at section 25, which is the access section for systemic advocacy. The government will be proposing some additional motions to the records section. I may be speaking out of school here, but I just wonder if we could have a short recess to decide if we could go back and recover the area of access to records, perhaps from the beginning, because it's awkward to be dealing with some questions out of order when they refer back to sections 24 and 25. It's a bit difficult in the middle of a day to leap into a section that refers back to previous sections on which government motions will be tabled.

**Mrs Sullivan:** I understand the concerns counsel has raised. Is it the intention of the government to bring forward complete new amendments in this area for discussion, in the entire area of access to records?

**Ms Perlis:** That is correct.

**Mrs Sullivan:** With respect not only to section 26, but to sections 24 and 25?

**Ms Perlis:** That is correct. So it's difficult, for example, for me to answer Mr Sterling's question, because it would be misleading to quote from the reprinted bill when I know that there are other amendments that will be tabled which we won't reach if we go in sequence starting with 26.

**Mrs Sullivan:** I understand counsel's concern. What concerns me is that we are in clause-by-clause. This is the final honing. This isn't the policy development process. We will agree to this, but this is just outrageous.

**The Chair:** A five-minute recess?

**Mr Malkowski:** Yes, I'd like to ask for a five-minute recess.

**The Chair:** This committee stands recessed for five minutes.

The committee recessed at 1618.

1716

**The Chair:** I'd like to call this meeting back to order.

**Mr Malkowski:** I would like to refer to legislative counsel to explain something.

**Ms Perlis:** Sorry; I don't believe that was legislative counsel; I think you meant legal counsel.

**The Chair:** Correct; legal counsel.

**Ms Perlis:** At this time the government is prepared to table all the motions it has prepared with respect to sections of the bill, some of which have been stood down and others which have previously been voted on. There may, of course, be additional or replacement motions that arise out of the discussion as we proceed through the motions. The subject matters which the motions deal with are complaints procedure, rights of entry to private dwellings and access to records.

**The Chair:** Do we have unanimous consent to introduce these amendments and read them into the record? Agreed.

Mr Malkowski moves that section 7 of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following subsections:

"Review procedure

"(6) A review procedure established under clause (1)(k.2) shall include an opportunity for the person making the complaint to be heard by a review committee that is composed of:

"(a) two persons who are members of the commission, selected by the chair of the commission;

"(b) two persons selected by the advisory committee established under clause 10(1)(a), who may be members of that committee or may be members of the public; and

"(c) one person who is appointed by the minister.

"Same

"(7) A review procedure established under clause (1)(k.2) shall provide that a complainant who is not satisfied with the response of the review committee may request a further review of the matter by the chair of the commission."

Mr Malkowski moves that section 24 of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following subsections:

"Idem

"(4.1) If an advocate has reasonable grounds to believe that a vulnerable person is incapable of giving or refusing consent to the advocate's access to a record referred to in subsection (1) and if the advocate is not entitled to access under subsection (2), the advocate is entitled to have access to the record,

"(a) with the consent of the vulnerable person's guardian of the person, guardian of property, attorney under a power of attorney for personal care or attorney under a power of attorney that confers authority in respect of the vulnerable person's property, or of any other person authorized to make decisions on behalf of the vulnerable person; or

"(b) if the vulnerable person does not wish the advocate to seek the consent of any person referred to in (a), with the consent of the commission.

"No access if vulnerable person objects

"(4.2) Despite subsections (2), (3), (4) and (4.1), an advocate shall not have access to a record referred to in subsection (1) if the vulnerable person objects.

"Access to other individuals' personal information

"(4.3) An advocate is not entitled to have access to any information that is personal information, as defined in the Freedom of Information and Protection of Privacy Act, relating to an individual other than the vulnerable person in respect of whom a right under this section is being exercised, unless the individual consents."

Mr Malkowski moves that subsection 25(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "vulnerable persons" in the third line and substituting "persons with a disability or persons sixty-five years of age or older."



Mr Malkowski moves that subsection 25(2) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "vulnerable" in the seventh and eighth lines.

Mr Malkowski moves that the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following section:

"Access to administrative records

"25.1(1) An advocate is entitled to have access without consent to administrative records which are in the custody or control of a facility, controlled-access residence, or program prescribed by the regulations made under this act.

"Exception, personal information

"(2) Nothing in subsection (1) authorizes an advocate to have access to personal information, as defined in the Freedom of Information and Protection of Privacy Act, which is contained in administrative records.

"Definition

"(3) For the purposes of this section, 'administrative records' means documents which relate to the observation, care, treatment or management of individuals or the provision of services to individuals including,

"(a) orders, directives, rules, guidelines, policy or procedural manuals or similar documents;"

"(b) documents that may be made available to the public under the Freedom of Information and Protection of Privacy Act; and

"(c) documents that could be made available to the public if the facility, controlled-access residence or program were subject to the Freedom of Information and Protection of Privacy Act."

At this time, could I ask you to withdraw your old motion on section 25.1?

**Mr Malkowski:** But we haven't gone through the amendments.

**The Chair:** I was just wondering if you wanted to withdraw the other motion you had in place.

**Mr Malkowski:** Yes.

**The Chair:** Thank you.

Mr Malkowski moves that section 25 of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following subsection:

"Access to personal information

"(2.1) An advocate is not entitled to have access to any information that is personal information, as defined in the Freedom of Information and Protection of Privacy Act, relating to an individual unless the individual consents."

Mr Malkowski moves that paragraph 2 of section 27 of the bill, as reprinted to show the amendments proposed by the minister, be struck out.

Mr Malkowski moves that subsection 18(1) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Application

"(1) This section applies with respect to premises other than those premises that an advocate is entitled to enter under section 17.

"Entry without a warrant

"(1.1) An advocate is entitled to enter premises without a warrant and at any time that is reasonable in the circumstances unless the occupier refuses to allow the advocate to enter.

"Same

"(1.2) Despite subsection (1.1), an advocate is entitled to enter premises without a warrant and at any time that is reasonable in the circumstances if the advocate has reasonable grounds to believe that there would be a substantial risk to the health or safety of a vulnerable person during the time that would be necessary to obtain a warrant under section 19."

Mr Malkowski moves that subsection 19(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by renumbering clause (a) as (a.2) and adding the following clauses:

"(a) a vulnerable person in the premises wants the services of an advocate;

"(a.1) there is a risk of serious harm to the health or safety of a vulnerable person in the premises."

Mr Malkowski moves that the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following section:

"Delegation of powers etc.

"8.1(1) The commission may delegate in writing any of its functions, powers or duties under the act to the chair or to any member or group of members and may impose such conditions and restrictions as it considers appropriate.

"Subdelegation by chair

"(2) The chair may delegate in writing to any person employed by the commission any function, power or duty of the commission delegated to the chair and may impose such conditions and restrictions as he or she considers appropriate.

"Restriction

"(3) Despite subsection (2), the chair shall not delegate a function, power or duty of the commission under subsection 25(1) or (2), clause 30(5.1)(d) or 30(5.2)(d) or subsection 31(3) or (4)."

Possibly now I can get some direction from the committee where we'll proceed from here.

1730

**Mrs Sullivan:** Mr Chairman, the amendments that have been put forward by the parliamentary assistant are substantial. At cursory glance they meet some of the demands that we were looking for. However, there are other very major concerns that are raised. We want to take these with us overnight and come back to them in the morning with unanimous consent.

I will tell you right now that I'm very concerned with subsection 25(1) and the change in wording from "vulnerable persons" to "persons with a disability or persons 65 years of age or over." The "persons with a disability" is not excluded by age; the "65 years of age or over" is not limited to the vulnerable. I want to review these issues overnight and come forward tomorrow morning back to Bill 74. I understand it would take unanimous consent in order to do that. I hope we have that.

In my time in this House I have been in committee for bills from Labour, women's issues, Environment, Health and several other ministries, and I have never seen such a botched-up process. This bill should be withdrawn. It's inadequate. The constant rewrites and constant confusion about what in fact the policy is, let alone how that policy is going to be interpreted through legislative means, is ridiculous. As legislators, it's impossible to deal with the constant changing of minds, variation of words and issues and changing of definitions. The approach is nonsensical.

People who are professionals, whether in the advocacy area or in the ministries themselves, are shocked at the display of incompetence we're seeing from the government in this area. This is absolutely ludicrous and I really believe, very sincerely, that this bill should be withdrawn. If the minister has any sense she would do that today.

**The Chair:** Do we have unanimous consent to go to Bill 74 tomorrow morning, with the understanding that we have to go to Bill 110 tomorrow also?

**Mr Malkowski:** Excuse me. There is something I'd like to say, Mr Chair. I missed what you just said. Could you go back and repeat it, please?

**The Chair:** I said, do we have unanimous consent to go to Bill 74 tomorrow morning, with the understanding that some time tomorrow we have to deal with Bill 110?

**Mr Malkowski:** First I think we should get Bill 110 out of the way, then we can go back to Bill 74.

**The Chair:** Are you saying we don't have unanimous consent?

**Mrs Sullivan:** The parliamentary assistant has been uncooperative all the way along in these issues. There is absolutely no question that when we were willing to debate, the parliamentary assistant invoked closure. We do

not believe we can go to Bill 110, which is a compendium bill that involves and relates back to all of the bills we're discussing, until we conclude discussion on Bill 74. What the parliamentary assistant is telling us is that he doesn't want to deal with this at all. If that's his view, why should the opposition be doing his work for him?

**Mr Morrow:** Mrs Sullivan, would you be looking at going back to Bill 74 for just the morning tomorrow and then to Bill 110 in the afternoon?

**Mrs Sullivan:** It's very clear from the rules that have been put down for the committee that Bill 110 must be considered before the end of the day tomorrow. We will clearly have to go back to Bill 110. We cannot go back to Bill 110 until we've dealt with Bill 74. I've never seen such incompetence.

**Mr Malkowski:** From your concerns, I accept your motion to go to Bill 74 first and then to Bill 110.

**Mr Jim Wilson:** All I can say, Mr Chairman, is thank God. Let's get going.

**The Chair:** Do we have unanimous consent to go to Bill 74?

**Ms Zanana L. Akande (St Andrew-St Patrick):** Would you please clarify. Are we going to Bill 110 in the afternoon? Is it Bill 74 in the morning and Bill 110 in the afternoon?

**The Chair:** At some time tomorrow we have to do Bill 110. Do we have unanimous consent to go to Bill 74 tomorrow morning and then Bill 110 later on in the day? Agreed.

This committee stands adjourned until 10 am tomorrow morning.

The committee adjourned at 1739.











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- \***Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- \*Carter, Jenny (Peterborough ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
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#### **Substitutions / Membres remplaçants:**

- \*Miclash, Frank (Kenora L) for Mr Mahoney
- \*Rizzo, Tony (Oakwood ND) for Mr Winninger
- \*Sterling, Norman W. (Carleton PC) for Mr Harnick
- \*Sullivan, Barbara (Halton Centre L) for Mr Chiarelli
- \*Wilson, Jim (Simcoe West/-Ouest PC) for Mr Runciman

\*In attendance / présents

#### **Also taking part / Autres participants et participantes:**

Auksi, Jutta, senior consultant, policy development branch, Ministry of Health  
Fram, Steve, counsel, policy development division, Ministry of the Attorney General  
Malkowski, Gary, parliamentary assistant to the Minister of Citizenship  
McKague, Carla, counsel, Office for Disability Issues, Ministry of Citizenship  
Perlis, Linda, policy analyst, Office for Disability Issues, Ministry of Citizenship  
Sharpe, Gilbert, director, legal services branch, Ministry of Health  
Wessenger, Paul, parliamentary assistant to the Minister of Health

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Wednesday 16 September 1992

### Standing committee on administration of justice

Advocacy Act, 1992

Consent and Capacity  
Statute Law Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 16 septembre 1992

### Comité permanent de l'administration de la justice

Loi de 1992 sur l'intervention

Loi de 1992 modifiant des  
lois en ce qui concerne  
le consentement et la capacité

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 16 September 1992

The committee met at 1022 in room 151.

### ADVOCACY ACT, 1992

#### LOI DE 1992 SUR L'INTERVENTION

Consideration of Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Loi concernant la prestation de services d'intervention en faveur des personnes vulnérables.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. This morning we will be continuing our deliberation clause by clause on Bill 74.

Before we start, could I get unanimous agreement that we will be dealing with the government motions that were put forward yesterday starting from section 24? Do we have unanimous consent? Agreed.

The first one is government motion subsection 24(4.1) and 24(4.2).

**Mrs Barbara Sullivan (Halton Centre):** In the course of speaking to subsection 24(4.1) I'd like to speak to all the government amendments, the purpose for which they've been put forward and the effect. I will tell you that we will not be supporting any of them. We believe that what the government has done is duplicitous. In terms of section 25, we believe that amendment is out of order and I will put those arguments.

Subsection 24(4.1) would enable an advocate, without even reason, to have a document, access that document. The advocate would be entitled to a record whether the person is at risk or whether the record is necessary for the purposes of advocacy. You can see that in the lines that read, "If the advocate is not entitled to access under subsection (2), the advocate is entitled to have access to the record." That, to us, is outrageous. Why should there be access if there is no purpose for which the advocate has the power to act for the advocate to have access to that record?

Subsection 25(1) moves even further into the realms of the outrageous. The commission consent to access for systemic purposes with this amendment would prevail over any other act. The consent for the access would relate not to consent for records of the vulnerable people but to consent of any person in Ontario who is disabled, any person in Ontario over 65, without the consent of those people.

Either the assumption is that all disabled and all seniors are vulnerable or, what I believe to be the case, the policy intent here, which I believe is duplicitous, is that the Advocacy Commission has a political agenda which is totally removed from the purposes of this act and which I believe has no place here. There is no limitation on the types of records that can be accessed, and these amendments indeed don't remove the access to peer review records or quality assurance records.

I want to suggest to you, Mr Chairman, that with this power the Advocacy Commission, through its advocates, would be able to access the records of 1,263,000 disabled in Ontario—1,163,990 disabled if the act still is limited to those over 16—and the records of 1,183,475 seniors in Ontario. Further, that amendment would provide consent to administrative records—the orders, the directives, the guidelines—which in fact specifically would include the peer review and quality assurance records. We cannot accept that; it is contrary to every piece of advice we've had through commissions in the past, including the Prichard report, and from every single health provider and facility in Ontario.

The other area of major concern with respect to these new bills relates to the fact that the documents which could be accessed would be accessed as if the Freedom of Information and Protection of Privacy Act applied. In my view, what this does is provide access without the relevant and balancing protections of that act. I believe that is out of order. I will be requesting an opinion from the clerk with respect to whether the amendments proposed in subsection 25(1) are in order. I believe they're out of order for two reasons: One is that they change the purpose and intent of the act by extending the scope of the act from vulnerable persons to people who are disabled and over 65 and, secondly, because this amendment changes an act without having the change to the act made itself. I believe those are out of order and I want the ruling from the clerk and, if necessary, from the officers of the House.

**Mr Jim Wilson (Simcoe West):** Mr Chairman, we're most discouraged, to say the least. I could think of a stronger word at the moment and if it were polite I would use it. In terms of what we saw last night, I think members of the public had better know what's happening right here in this committee room, because history is being made and it's bad history; it will be recorded as such. We have going on right now, as of the amendments Mr Malkowski and Mr Winninger brought in last night—the NDP brought in—a point where the Big Brother syndrome is evident more than I think it has ever been evident before, certainly in health care legislation.

You people, the government, have gone to an absolute extreme here in terms of wanting records not only on vulnerable people, because you're now changing—you're taking out that section in 25 that would limit the advocate accessing records just to vulnerable people. You're now saying that everybody 65 years of age and older in this province is disabled, that an advocate they do not know can go in and take their records.

If you thought the social insurance number debate that the federal government has gone through over the years was tough on the government, wait till you see when seniors wake up in this province and realize that you people

want access to their records while they're in hospital or in a health care setting or in a number of other settings. That's disgusting. That's about the strongest word I can think of. It's absolutely disgusting.

1030

Instead of bringing in amendments to limit the information that is available to these advocates—you've got a chip on your shoulder—you've come back and just opened it wide open by including observation in your new section 25.1. You're entitled to all the peer review documents, all documents held by the facility that may pertain to the operation of that facility, ie, a hospital. Wait till hospital boards hear about this.

I hope the people of the province are watching the television now and will get on their phones and start screaming to their MPPs that you do not want Big Brother in the hospital beds of Ontario and in the nursing home beds of Ontario. It's disgusting.

I have a question for Mr Malkowski. How is peer review going to work if the advocate has access to the records? That's a confidential system that only works because it's peers. It's medical practitioners reviewing other medical practitioners without interference from the outside. Now the advocate has access to those records, for what reason I don't know. You've taken out in these amendments the reasons an advocate had to have to have these records in the first place. Now they don't appear to need any reason. Just go ahead, if you're disabled, not just vulnerable, but any disabled person; and we're all disabled at some point in our lives and we're probably disabled when we're in hospital. So I would say that under this broad definition you now have access to everybody's records in hospital, not just those who have been deemed to be vulnerable.

This is ridiculous and I think the parliamentary assistant to the Minister of Health should speak up here. This is damaging to the health care system. You can't sit there and let Mr Malkowski—because he's got a chip on his shoulder and he's somehow got one aim in mind and that's political, systemic advocacy, because he has a suspicion or he believes that health care providers can't be trusted in this province and the rest of the government believes that, then you damn well should get yourselves out of office before you destroy the health care system in this province.

This legislation, like so much of your tax legislation and so much of your labour laws, really, folks, in the long run hurts the people you pretend you're going to bat for, hurts your interest groups that you're so caught up in paying back with this legislation. This will hurt the health care system. It guts any confidence that health care practitioners might have had in your ability to run the government for the next two and a half years and it's very, very damaging.

I'll have more to say, but I specifically want to know how anyone figures peer review's going to work after this. I want to know why you want such wide-sweeping powers to have information on individuals in facilities. I don't see the need for it. I want to know why "vulnerable persons" is being taken out and it's being expanded to cover every senior citizen in the province and everyone who's deemed disabled, which I would say is every Ontarian who ends up

in a health care facility. Why do you need these wide-sweeping powers?

**Mr Gary Malkowski (York East):** Just for the record, I would like to respond very directly to both opposition parties and their concerns. I think there have been a lot of misunderstandings that have occurred and I think it's very important that the members of the opposition listen to clarification on these amendments and I would challenge you to realize that the attempt is certainly to help vulnerable people. There is a real need out there.

This legislation is greatly needed and access to these records is critical in order to protect vulnerable people who have a right to that protection and that has always been my point. That is our intention. I'm concerned that both members are not supportive of vulnerable people and I have to come right out and say that. The legislation is clearly saying that—

**Mr Jim Wilson:** That's absolutely unfair. That is absolutely crazy.

**Mrs Sullivan:** Point of order, Mr Chair.

Interjections.

**Mrs Sullivan:** We are only for good legislation in Ontario. He is impugning our motives. That's out of order.

**The Chair:** Order. Mr Malkowski.

Interjections.

**The Chair:** Order. Mr Malkowski.

**Mrs Sullivan:** He is out of order, Mr Chair.

**The Chair:** Temper your remarks, please.

**Mr Malkowski:** I'll ask legislative counsel to clarify the intention of these amendments, and I would like the opposition to listen carefully to the explanation.

**Ms Carla McKague:** Let me take the sections here one at a time, starting with section 24. The purpose of the amendments to section 24 is twofold. One of the two, if you look at subsection 24(4.2), is to emphasize something already contained in the legislation, that in no case will an advocate get access to a vulnerable client's record if the vulnerable client doesn't want him to. It doesn't matter whether the client himself is capable of consenting to access; he's always deemed capable of refusing. If there's an objection from the vulnerable person, the advocate will not get the record.

Subsection 24(4.1) has quite a different purpose. Subsection 24(4.1) is there to fill in what appeared to be a gap in the section. This section deals with two different kinds of capacity. It involves capacity to instruct an advocate, and it involves capacity to consent to access to a record.

Different subsections provide different ways for an advocate to get access to a client's record. Subsection 24(1) provides that the advocate may access the record on the consent of the vulnerable person. That, of course, requires the vulnerable person to be competent to consent to the access.

Subsection 24(2) provides access in the non-instructed advocacy situation where there's a risk of serious harm and the advocate needs to get to that record in order to prevent serious harm.



Subsection 24(4) deals with access where someone else is instructing the advocate because the vulnerable person isn't capable of instruction. What we did not have contained in this section until this amendment is the quite plausible scenario of an individual who is capable of instructing an advocate but not capable of consenting to access to records. There was no way in this section that the advocate could get those records, because the person himself, though instructing, wasn't capable to release them. You couldn't have a substitute release them, because the substitute had to be instructing under subsection 24(4).

All this does is say that where you have someone who is personally instructing the advocate but not competent to consent to accessing records, you can take a substituted consent to get to the client's record. That's the entire import of subsection 24(4.1).

**Mrs Sullivan:** On a point of order, Mr Chair: Counsel has attempted to make this amendment sound quite reasonable. Unfortunately, if that is the entire intent, then the drafting has been subject to, perhaps to be kind, sloppiness from enthusiastic amateurs, because the counsel has conveniently missed the point that in fact the lead-in to subsection 24(4.1) does not include the fact that the advocate can have access to documents and to records whether or not the advocate has reasonable grounds to believe there's a vulnerable person who is incapable of giving or refusing consent, whether or not there's a serious risk of harm and whether or not the access to the record is necessary to provide advocacy services.

That is specific in the interim paragraph, which reads, "and if the advocate is not entitled to access under subsection (2), the advocate is entitled to have access to the record..." In fact, I believe what counsel has done is duplicitous; it is misleading this committee.

**Ms McKague:** If I might respond, subsection (2) is a very specific provision. Subsection (2) is where there is risk of serious harm and the advocate may access the record without consent.

What this deals with is the situation where there is not risk of serious harm, where there is in fact a client instructing the advocate and where the client is unable to consent to accessing the record. It reads, "if the advocate is not entitled to access under subsection (2)"; in other words, access without consent because of risk of serious harm. Then "the advocate is entitled to have access to the record" with one of the specified substituted consents.

**The Chair:** It seems what we have here is a difference of opinion on the interpretation and that's why we're debating this right now.

1040

**Mr Jim Wilson:** I just want to clear up a point here. I'm pleased counsel's giving an explanation of section 24 here. We don't have such a problem with this section. My remarks pertained primarily to the next section and some of the other amendments that come in, where the commission is given tremendous powers to bestow upon advocates. I know counsel will get into that shortly.

For Mr Malkowski to accuse us of not being supportive of vulnerable persons is absolutely disgusting, that he

would even say that. If he wants to get committee members upset, that's a very good way of continuing to keep us upset. I don't have any problem. I understand this section very well and in cases where the—

**The Chair:** Thank you, Mr Wilson. We do have a fairly lengthy speaking order here and we are debating the whole package, so if you would like to get back on the list again, could you please indicate.

**Mr Jim Wilson:** I thought you had me on the list.

**The Chair:** Again? If legal counsel would like to proceed.

**Ms McKague:** Should I continue, Mr Chairman?

**The Chair:** Please.

**Ms McKague:** Section 25 is, of course, the section that deals with access to records for purposes of systemic advocacy. In fact, it's the belief of our office that we have substantially narrowed access to records in this section. The issue with which we were concerned in redrafting the section was the problem faced by the operator of the facility or a controlled-access residence or a program.

When the commission gave consent for access for the purposes of systemic advocacy to records relating to vulnerable persons, there would in fact be a burden on the operator of the facility or whatever to determine which of the people in that facility were vulnerable persons so that access could be given. Not everyone in a particular nursing home would be a vulnerable person. Not everyone on a particular psychiatric ward would be a vulnerable person. There was a real difficulty as to how to decide which records the advocate could access. There were concerns expressed by the opposition, in fact, about the potential invasion of privacy of persons who were not vulnerable because of the personal information available in these records.

In order to solve that problem, what the government amendment does is, first of all, take that burden off the administrator of the facility by saying, for purposes of systemic advocacy, with the commission's consent—and remember, this is always there—the advocate may have access to all records relating to people who are disabled or people who are 65 or older, but a concomitant amendment says, "however, not to any personal information." In other words, the commission is not allowed to get personal information about anyone in dealing with systemic advocacy.

We might point out that exactly this same kind of access is routinely given under a number of statutes; for example, research. Under the Mental Health Act, researchers may have full access to clinical records in psychiatric facilities, without personal information; in fact, in some cases with the personal information, so long as that isn't reported elsewhere.

So what we've done is try to take the burden off the operator of the facility, program or residence. And remember, those are the records we're talking about. It has to be in a facility, residence or program where the commission has already agreed that there is a good reason to carry out systemic advocacy. We've said in order to take the burden off the operator of deciding who's vulnerable and who



isn't, we will allow access to all records but no personal information. That's the import of the amendments to 25 and a concomitant amendment to 27.

As far as 25.1 goes, this again is in response to opposition concerns that the former wording was too vague, too general. It specifies three types of documents which could overlap that should be available. It also says that nothing in administrative records, which is what this section is talking about—that the advocate is not entitled to personal information in those administrative records.

It defines it as “orders, directives, rules, guidelines, policy or procedural manuals or similar documents”—which are obviously of great importance to an advocate; if you have a client who is being secluded, for instance, it's important to have access to the policy of the institution around seclusion in order to know whether that policy is being followed—documents that may be made available to the public under the Freedom of Information and Protection of Privacy Act and similar documents in facilities that are not covered by that act.

I believe perhaps Mr Wessinger had some further comments on 25.1, but that is the intent of the legislation, to make it very specific, very definite as to what documents are and are not, and that's a direct response to the opposition concern about the vagueness and generality of the previous draft.

**Mr Norman W. Sterling (Carleton):** I have some questions about the amendments, particularly to section 25. If we are giving access to the commission for the purposes of systematic policies or practices that may be detrimental to vulnerable people and we're excluding all personal records with regard to anybody who is 65 or whatever, according to what I read, what records are they going to be permitted to see?

**Ms McKague:** Not personal records, personal information contained in the records. For example, let us take an extreme example, a hospital ward in which people are being routinely secluded and restrained, in violation of good policy and the law. The advocate, if he or she got the commission's approval to investigate that situation, would have access to the records but not to the names. They would not be able to determine which particular individuals, for instance, had been improperly secluded, but they would have the information without the names and they could demonstrate that 12 people had been treated in that way. They just wouldn't have their identities.

**Mr Sterling:** I haven't had an opportunity to read all the amendments. Can I ask you too if these most recent amendments, which I think would be of great concern to our hospitals and to our other health care facilities—have you consulted with them with regard to the particular wording involved in these amendments, so they would have an opportunity to respond?

My greatest outrage at this particular point in time is that very late in the game you're proposing some new amendments which are very sensitive in terms of how hospitals and health care providers or facilities control information. The most serious problem I see is, are these people going to have another opportunity to appear again in front

of this committee to comment on these sections? I don't think we have time, according to our schedule, but I think in fairness to those health care facilities, if you're going to revamp the information sections, really fairness only says that we have to allow those public hospitals, the OHA, to come back and comment again. Could I ask if there was consultation?

1050

**The Chair:** If I may, Mr Sterling, you realize that there is no available time for that, and right now on—

**Mr Sterling:** No, I'm asking if—

**The Chair:** I'd like to make my ruling on subsection 25(1). It is out of order. It allows the advocate access to information on a group of people not necessarily vulnerable and not contemplated in the scope of the bill.

**Mr Sterling:** Can I ask the question of whether or not there was consultation with regard to these amendments? Do they know about these?

**Ms McKague:** I cannot respond to that. I'm sorry, I don't know the answer. Perhaps one of the members or one of the policy people would like to respond.

**Mr Mark Morrow (Wentworth East):** On a point of order, Mr Chair: Am I to understand that you just ruled 25(1) out of order with only hearing the two opposition parties without hearing the government side?

**The Chair:** It has nothing to do with it. There is no debate. You can appeal the ruling to the Speaker. No debate.

**Mr Morrow:** Thank you.

**Mr Paul Wessinger (Simcoe Centre):** Could I have some clarity, Mr Chair: 25.1 is ruled out.

**The Chair:** Subsection 25(1).

**Mr Wessinger:** Which motion are we talking about? Is that the one removing—

**Interjection:** “Vulnerable persons,” and adding everybody else in the province.

**Mr Wessinger:** Just the one removing “vulnerable,” not the other one?

**The Chair:** Subsection 25(1).

**Mr Wessinger:** Not 25.1, okay, fine.

**Mr David Winninger (London South):** On a point of order, Mr Chair: Your ruling was on 25(1) or 25.1?

**The Chair:** Subsection 25(1).

**Mr Winninger:** Okay. It's important that we know that.

**The Chair:** Is there any response to Mr Sterling's inquiry?

**Mrs Sullivan:** I can respond to that, because this morning I spoke to the Ontario Medical Association, the Ontario Hospital Association, the College of Physicians and Surgeons and the Ontario Nursing Home Association. None of them had been advised of any of these amendments until I put them to them and faxed them to them.

**Mr Sterling:** What are you going to do about it? What is the government going to do about this? You cannot, at this late date, start to fool around with major parts of the



bill and expect it to have any kind of support out there in the community.

I suggest you go to the House leaders, Mr Chairman. I suggest we adjourn these hearings, go to our House leaders, ask them for time for public input into these amendments to these sections and postpone the whole process so that we can deal with these in a fair and democratic way where people have the opportunity to come in front of the committee and deal with the legislation that's in front of us.

**Mrs Sullivan:** On a point of order, Mr Chairman: I have a motion to put before the committee. I move that the Chair of the standing committee on administration of justice, on behalf of its members—

**The Chair:** You can't move a motion on a point of order.

**Mrs Sullivan:** Then I'd like to move it without a point of order and I now have the floor.

**The Chair:** We have a point of order from Mr Wessenger.

**Mr Wessenger:** Yes, Mr Chair. What motion are we discussing now?

**The Chair:** When we started, we agreed that we would start on the package of amendments that was introduced by the government yesterday. When Mrs Sullivan started the discussion, she said she was going to speak on the whole package.

**Mr Wessenger:** But technically we ought to be speaking on one section. Am I quite correct? We should be dealing with section—

**The Chair:** We're on clause-by-clause. We are on—

**Mr Wessenger:** I would ask that we deal with section 24 and then proceed as normal on this matter, deal with section by section.

**The Chair:** It was my impression, in speaking on 24(4.1) and (4.2) that Mrs Sullivan was going to make comments on that relating to the rest of the package. That was my impression. But yes, we are debating 24(4.1) and (4.2) at the moment.

**Mr Wessenger:** Yes, that's fine. I just wanted that for clarification.

**Mrs Sullivan:** Mr Chairman, I have a motion.

**The Chair:** Mrs Sullivan moves that the Chair of the standing committee on the administration of justice, on behalf of its members, report to the Legislative Assembly with respect to Bill 74 as follows:

(a) That the members, having proceeded to examine Bill 74 clause by clause, are unable to complete the work assigned to them by the assembly in the time allotted by the motion of the House;

(b) That government motions altering the policy of the bill have been presented to the committee for consideration in the final moments available for consideration of the bill;

(c) That opposition and government motions for amendments have been stood down by the parliamentary

assistant for clarification or redrafting and have not been brought back to the committee for consideration;

(d) That committee recesses, prompted by the government's uncertainty over the policy intent of the bill, have caused undue delays in the committee's work; and

(e) That the committee is unable to exercise its legislative duties with diligence due to numerous conflicting amendments and public concerns; and further that

(f) It is the recommendation of the committee that due to its deficiencies in policy and drafting, the minister withdraw Bill 74 in its current form, clarify the policy intent and introduce a revised bill for appropriate consideration by members of the Legislative Assembly.

Debate on Mrs Sullivan's motion.

**Mrs Sullivan:** I think it's very clear that throughout the process on Bill 74 there have been obfuscations, changes in policy, concerns about the policy intent of the bill, and indeed this last scenario where an amendment which changed the entire policy intent of the bill means that we cannot do our duty to the assembly in drafting laws, to the people of Ontario in drafting laws. We cannot do our work appropriately.

The bill is badly drafted. Through the entire process here we've seen the influence of well-meaning people who have had input, but unfortunately the bill will not stand up to public and legislative scrutiny. We believe that if it's the government's intent to have an operable piece of legislation, the government should go back and begin at the beginning.

**Mr Winninger:** I'm really quite disappointed at the level to which this discussion has sunk this morning. I know we all share an interest in vulnerable people. I know we may have ideological perspectives on this that may not be entirely consistent.

I sat here and listened to a very angry diatribe from Mr Wilson and I've heard a lot of rhetoric this morning, but I thought—and I think we should be mindful and the viewers watching these proceedings should be mindful—that we agreed to come back to Bill 74 because we thought we could get something accomplished, that we could perhaps tighten up some sections, that we could improve the legislation. I think we all agree this is very progressive, cutting-edge legislation and there are areas that could be perfected.

Yet we come here this morning, intending in good faith to engage in productive debate, and now Ms Sullivan comes forward with a motion, and I don't think she just scribbled that out now. I think she arrived with that this morning, which would—

**Mrs Sullivan:** I certainly did, after I read the amendments you put forward.

**The Chair:** Order.

**Mr Winninger:** —jettison the discussion and proceedings on this particular bill. I can't, in my own mind, reconcile that kind of motion with an intention to deal with this legislation in good faith.

I look at these amendments that have been brought forward today. I see we've addressed issues that have been raised at previous proceedings in regard to warrantless entry, in regard to consent of the vulnerable person to



release of records, in regard to release of personal information, in the context of systemic advocacy. I think we've bent over backwards, in a spirit of compromise, to address the concerns registered by the opposition and many of the presenters before the committee.

I can't say how disappointed I am that now this proceeding is being used for, I think, blatantly partisan purposes to jettison a very good bill that's going to assist a lot of people in society—I won't call them disabled and I won't call them frail elderly over 65, because that was ruled out of order—but vulnerable people in society who have been waiting a very long time for this legislation to be passed. I strenuously oppose the motion of Ms Sullivan, and I'm disappointed that we can't be a little more constructive about the way we manage this legislation.

1100

**Mr Sterling:** You know, having sat here during all the hearings we've had on this piece of legislation and the other pieces of legislation, we've remained as constructive as you can possibly be in opposition, which is difficult because of the nature of the parliamentary forum that we're in. But there does come a point where you lose confidence in the ministry that is putting forward a piece of legislation. After continual stalls, changes and rethinking on various different parts of the bill, you begin to wonder whether or not the central thrust, the intent the government had in the beginning, is together any more.

When you're dealing with information, when you're dealing with the rights of a commission which is going to be out there, basically accountable to no one but biased in its makeup—and that's a choice which is being made. You have a biased commission out there which is going to be a natural adversary of health care providers. We're trying to decide at the very last moment what this natural adversary to health care providers—what kinds of rights or powers they have to enter their natural adversary's environment without another consultation or without any consultation as to how these new rights are going to affect their natural adversary. I find this pretty disturbing. I really do.

I don't know whether going back and redrafting the bill is the answer, but it's becoming more and more confusing to us in the opposition as to whether or not people have really sat down and thought this thing through carefully and set out what is the balance of powers that are going to exist between these natural adversaries that we are setting up. I just have no faith in the ministry having thought this through or consulting with the players who are involved.

When government goes forward and creates new rights, which is basically what we're doing here—we're creating new rights in the hands of some individuals who are not going to be responsible to me in this legislative committee; they're going to be responsible to some minister who has failed to appear in front of this committee. If you're doing that, you have to be very careful. You're providing the commission with some pretty dramatic powers to walk into these institutions and say, "We want your records."

I haven't even engaged the legal counsel for the ministry in questions like who's going to be responsible for

hiding the identity of the people whose records the commission or the advocate can have a look at. How do you know what records they're going to go after? Does the facility require two sets of records, one with blanked-out names or no identities or no way of identifying the health care records with a particular individual? What happens when there is only one patient with whatever the particular ailment might be within the facility? How do you protect the privacy of that individual? There's a whole host of questions. I'm sure groups like the Ontario Hospital Association and some of the other long-term care facilities, which I understand will be affected by these new changes being introduced at this late date, are going to be affected.

At this point, I really have lost confidence in this ministry knowing what it's doing. I don't think they know what they're doing. They're not only going to set up an adversarial system where they don't understand what powers they're giving to both sides, but they're going to blow about \$30 million or \$40 million on this.

**Mr Jim Wilson:** At least.

**Mr Sterling:** I just have a lot of trouble weighing the money and having any confidence that they know what they're doing, that they're going to do anything for vulnerable people save and except set vulnerable people against the health care institutions that are providing the treatment for those vulnerable people. I think that's what's happening and I'm very concerned about it.

**Mr Malkowski:** For the record, I'd like to respond to the opposition's concerns regarding Mrs Sullivan's motion. The government members have made every effort to listen and respond to the concerns raised by the opposition in terms of amendments. We have given extra time. We have been more than willing to give additional time to work on the bill. We have worked very hard to bring in and strike the balance that is needed for vulnerable people, for people over the age of 65, balancing the rights in order to meet the needs of vulnerable individuals and health care professionals.

I think opposition members have tried in many ways, with delaying tactics, to stall very important legislation. I think we have to remember, if we quote from Father O'Sullivan's report, that he said clearly that we must critically have legislation that will protect vulnerable people from abuse, from neglect, as much as possible. There are many vulnerable people out there, many people over the age of 65, who have been asking for this legislation and wanting its time to come.

I would ask both opposition parties to reconsider cooperating and working together to develop a very needed balance so that we can indeed focus on the needs of vulnerable individuals. I think it's very unfortunate that this cooperation has not existed. I feel the government has made every effort to do so and it has not been successful.

Therefore, I will have to say also that I oppose Ms Sullivan's motion. I do so for the sake of vulnerable people and those people in society who are waiting for this legislation to go through as soon as possible.

**Mr Jim Wilson:** I'll try to be a little calmer than I perhaps was the last time I spoke. Two words come to



mind when looking at this bill and the amendments that were brought in by the government within the last 24 hours. They are "consultation" and "fairness." They're words that this government ran a campaign on and continues to use daily. If you want to talk about diatribe, that's the basis for the NDP crap they're dishing out to the people of Ontario.

The government admitted this morning that it's not consulted with the major stakeholders in any way whatsoever in drafting these new amendments. Mr Malkowski and Mr Winninger tell us these new amendments are an attempt to appease the opposition, to tighten up the legislation, to address our concerns. We're sitting here telling you that they do not address our concerns, that you've not consulted with the major stakeholders and that you've not really listened. I think what you've done is you've listened to your one group, and that's people who are probably going to be on the Advocacy Commission, as the Ontario Advocacy Coalition. You're captured by them.

Their argument that they need sweeping powers in order to do systemic advocacy—there's a reason their powers, the powers of an advocate, now are limited under the Mental Health Act and under the freedom of information act. There are good legislative reasons. Sean O'Sullivan understood those reasons, and I think he'd be rolling over in his grave if he knew that in order to give other people new rights, to give this biased commission, this army of advocates, new rights to act on behalf of vulnerable people, which is the language the government uses to try to sell this legislation, you're trampling on others' rights.

There are so many overrides in this legislation that you're actually trampling on vulnerable persons' rights, some very fundamental rights, and you're really not asking the question, do all these people, do people in hospitals, do family members, do disabled individuals, do the vast majority of those people really want the state to interfere to this extent in their lives and have access to information about their lives?

1110

I don't buy the argument that somehow institutions will be able to sufficiently abide by this legislation and ensure that the advocates only receive information that doesn't contain personal identifiers. I find that problematic. I find that expensive. It seems to me what's missing and what was missed in this legislation is the balance.

We had some safeguards that spelled out reasons that advocates needed for this information. It seems to me with the new amendments there aren't those reasons any more. We already know what the answer of the commission is going to be when the advocate goes and says, "I need information to do some systemic advocacy," which to me looks like political advocacy. It doesn't address the question of resources.

Again, to do a little aside here, we go back and even with all this information, even when they identify problems in the system, you're taking \$40 million to \$50 million out of the system to set up this commission and do the things required in this act. You don't have the resources to correct these problems. We already know. We get calls

every day, and letters, particularly as Health critics in opposition. We get all kinds of things that need to be addressed in our social service and health systems. The problem is there aren't the resources.

The problem with this legislation is you're trampling on other people's rights to really, I think, respond to a campaign promise. I re-read the promise that was made by the NDP. I think it was made to a very select group of people, and I do not think this legislation is good legislation. I think Mr Sterling's point is, who did you consult with in dealing with these new amendments? Mrs Sullivan correctly spent the time this morning talking to the groups that you have to have cooperation from in order for this legislation to work, and they're very much opposed to what they've seen in these new amendments.

I support Mrs Sullivan's motion. It goes back to what I said in the House last year in speaking about this legislation. It should be withdrawn and redrafted. We're back to where we started, except it's worse. What's happened in the last 24 hours is beyond what I thought you could possibly do in terms of destroying, I think, any good intent you had in this legislation. When you talk about being on the cutting edge, what you're doing is cutting off the heads of health care providers, people who have to run these institutions, and you're again sending out even a more powerful negative message that, "We don't trust you."

Now, are you going to give—

**Mr Morrow:** On a point of order, Mr Chair: Can we please ask Mr Wilson to speak to the motion?

**Mr Jim Wilson:** I am speaking to the motion.

**The Chair:** He is speaking to the motion, Mr Morrow.

**Mr Jim Wilson:** And I'm doing it as loudly as possible, so if you can't hear me, it's not my fault.

You're cutting off the heads of people who have to run these institutions. You're imposing your will on them, again without reason, and I think you're into some really serious problems down the road.

If I was an administrator of one of these institutions, I'd be tempted to just simply quit and say: "Why don't you have the advocates run the system? You think they have all the bloody answers," even though we don't know what an "advocate" is because it's not defined correctly in this legislation, or in health care institutions, let's just have the rights advisers do the surgery. Let's have the rights advisers set the leg.

That's essentially what you're doing in this legislation. I think that's what the effect is and I think that's what the service providers are telling us. You've done everything you can in this legislation to shut out service providers, and again, Mr Sterling was able to find out this morning that you haven't even bothered to consult with them.

I think your Premier would be ashamed of what's going on in this committee if he really wants to talk about fairness and consultation. There's nothing fair about this legislation. It's biased, it's Big Brother at its worst.

I fully support this motion and figure we're no further ahead now, after all the public hearings, because you people don't listen. You have an ideology that you stick to. It seems to me you have a very narrow interest base, which



you pamper, and you look at the extremes in society. You look at the worst possible scenarios in order to make legislation.

Yes, government is there to protect the weakest in our society. We all believe that or we wouldn't be sitting here today and we wouldn't have run for Parliament. Yes, society is judged on how it treats its most vulnerable people. No one's going to argue those statements—it's like talking about motherhood—but to mask this legislation in those types of statements is a falsehood. You're not being honest with the people of Ontario.

Your legislation goes far beyond helping vulnerable people. Your legislation says: "We don't like the world as it's been running. We don't trust health care practitioners or professionals." In other areas, we certainly see you don't trust business to create jobs. This lack of trust permeates this legislation and I think you should withdraw it.

I think, at the very least, we know it's possible to get agreement from the House leaders, because we've already had agreement once from the House leaders, to show some flexibility in time.

It's in your best interests, so when we come to government in two and a half years, we don't have to gut everything in this legislation. It's in your best interests to set up legislation that not only helps the vulnerable but at the same time doesn't do more damage to the vast majority of people who do not want this infringement on their lives.

You shouldn't be taking money and resources to fix systems when we already know what a number of the problems are in our systems. We don't need a new army of advocates and a new arm's-length commission telling us what's wrong. I think we could simply have a few more weeks of public hearings. If we ask the right questions in terms of how to fix the system, what areas of the system are broken and how much money will be required, you'd be a far better government. You'd be doing a greater service to society. You'd be doing what you were elected to do, rather than pamper simply narrow-minded interest groups, which we know you're doing because you've stated that you refused to consult on these new amendments with the major stakeholders in this.

**Mr Malkowski:** Mr Chairman, on a point of order: Since the motion, subsection 25(1), has been ruled out of order, we are going to have to withdraw some of the other sections and amendments: subsection 25(2), subsection 25(2.1), as well as section 27. We will then also have to amend another section, section 24; we'll have to take out subsection (4.3).

1120

**Ms Jenny Carter (Peterborough):** I came here this morning thinking that we were cooperating with the opposition members in continuing to discuss this bill and, in particular, the motions the government has brought forward. We have become sidetracked on that. We now seem to be having a general discussion. So be it.

If we do this, obviously we're less likely to get through the specific points we could have been discussing. It seems to me that the motions the government has brought forward were in fact an attempt to accommodate some of the

points that had been raised previously. Maybe the opposition doesn't want to concentrate on them for that reason.

In section 24, for example, we're merely solving a problem that would arise in some cases where an advocate would have had no means of accessing information, which would have meant they couldn't carry out their function. I should also underline that the wider access to information that was contemplated under the section that's now been ruled out of order would have involved no personal revelations and, conversely, that the personal access to information under section 24 can only take place with the consent of the vulnerable person. I do not see what the problems were there.

The question of Big Brother and adversarial relationships have been raised by the opposition members. They have brought these terms into this discussion; we haven't. May I put to them the obvious point: that nobody, whether health care givers, family or anybody else, is adversarial as far as this legislation goes, unless they are in some way infringing on the vulnerability of persons in their care. Somebody carrying out their duties or serving their family members in the way most of us do would have nothing to fear from this act and, in fact, I'm sure would be glad of it. This act offers help to the families of vulnerable people and to people who want to carry out their duties in a fair and reasonable way within institutions.

It seems to me that, for all their protestations to the contrary, the opposition members have no concept of what we are really trying to do here. There are people in this province, many of them vulnerable and not receiving the rights to which they are entitled.

I don't know whether any of you have read the Lightman report, for example, but he talks about the bill of rights for people in unregulated accommodation. He has found people who are having their allowances stolen, who can be locked out of their accommodation, who can have their belongings stolen, who have no rights to receive guests, who have their mail opened; the list goes on and on. There are people being treated in these kinds of ways in this province and this legislation is to try to get access to those people to hear what they have to say and to try to solve those problems.

For example, when we're told that access is invasion of privacy, I really wonder whose privacy we're talking about and whether we couldn't look at this the other way around and say that the right of some people to receive guests or to speak to people to whom they wish to speak is being infringed upon if we don't have such rights.

So I certainly repudiate any suggestion that we should withdraw this bill. I repudiate Mrs Sullivan's motion and I regret that we have not spent this time in discussing the more specific points we have raised in connection with this bill.

**Mr Alvin Curling (Scarborough North):** There is no doubt that we need proper legislation to protect people who are most vulnerable in our society, and that's the reason this bill is here. That's the reason all of us, as members sitting on this committee, are here and take that deep interest in it.



When Mr Winninger spoke about Mrs Sullivan having this all planned a long time ago without reading the amendments, long before these amendments came in, he's completely wrong. If there's anyone on this committee, and I respect all my colleagues here, who has taken a very keen interest in diligently going through every detail of this bill, it is Mrs Sullivan. As a matter of fact, you can see, as we in our caucus demonstrated, we have allowed her to say all the things to be said because she said it very well and said it the exact way we all would have said it in our caucus. I was completely shocked to note how Mr Winninger took that position, that before the amendments were being looked at she had presented this motion.

I think the problem here is that Mr Winninger himself has not read the motion, because if he read the motion, it talks in detail about why this bill should be withdrawn. As a matter of fact, just in the debate, the point of order that Mr Malkowski brought in, having to withdraw this and withdraw that; as a matter of fact, if we continue to criticize the inadequacy of this bill, we've been extremely successful in him withdrawing and the government withdrawing most of what is there because we find it inconsistent and confusing; and we will point that out, as the Conservatives have pointed it out, and we have pointed this out.

We're trying to save this embarrassment of the government, which has a bill and by the time we're through there'd be no bill. So we're saying pull this back, in support of this motion, pull this bill out and maybe we should start all over again.

Many of the interest groups have called us, and we're talking about the professionals and the doctors who have called us, and said that maybe the government has stopped listening and maybe we would listen and bring this forward, and this is what the bill is all about. We've told you that many of the professionals are extremely concerned that this bill going forward would jeopardize the proper, professional workings unless it is properly drafted. So I of course will support this, and it's not a matter of opposition. We hope that the government would have some sense in seeing the light and maybe supporting this and not a matter of one winning or the other.

Furthermore, when we speak about interest in this bill, this committee, the opposition here, has asked many, many times to have the ministers come forward to represent the government's case. They have refused. As a matter of fact, if you'll allow me, Mr Chairman, I'll just read three lines of the response coming from not even the minister herself but the acting executive assistant to the Minister of Citizenship, who should be here. "The minister's schedule does not allow her to attend on the dates requested." Remember, though, that it's the government, as you know, Mr Chairman, which determines the time that we meet here as a committee. "She would be pleased to consider other dates as soon as you are able to advise if further hearings are necessary."

The minister has not even attended here. Who has shown more interest, Mr Chairman? That is why we feel that if the government is not serious about this, maybe it should withdraw the bill and have a proper one. Maybe the

minister is not serious. Of course, we're sure Mr Malkowski has deep interest in that. We want the minister here. We want the minister to respond to some of the political questions that have been asked because that's what she's elected to do. But she has refused to come here.

You have seen times, Mr Chairman, when we ask for counsel advice and we get that, and when we ask for policy advice, we get that. When we go to the political advice, there is none. They can't respond. Or the attempts by the parliamentary assistant or some of the members—and they make, of course, great attempts to do that—fall short. We want the minister to be here.

So when we talk about interest and Mr Winninger talks about Mrs Sullivan's motion, that is well-thought-out and we know what we're doing and we're giving you a chance to support this so we can have a proper bill, the proper legislation to protect the most vulnerable people.

**The Chair:** On Mrs Sullivan's motion, Mr Sterling.

1130

**Mr Sterling:** I just wanted to take great opposition to Mr Malkowski's statement that we have been stalling these pieces of legislation. Nothing could be further from the truth. We believe the proper input was necessary, and I believe that's why the government House leader acceded to our request to have further public hearings, and quite frankly, if anybody had been following the activities of this committee over the last three weeks, they would have to come to the conclusion that on any single issue, save and except for this morning, all parties—and I include the governing party, and it's partially because of your chairmanship, Mr Chairman—the debate has been fairly succinct. There have been issues on which we feel very strongly and perhaps the debate went on a little longer, but for the most part we've dealt with I think probably over 100 amendments with regard to all of these pieces of legislation and I thought, quite frankly, that from February on, when we were dealing with this very complex piece of legislation, all people on all sides of this committee had dealt with it in a fair way and in fair time.

The longest delays we've had, quite frankly, have been at the request of Mr Malkowski himself. He has requested I think 10 or 12 different recesses or adjournments which have been lengthy adjournments, and if anyone takes responsibility for postponing this legislation it's he himself, it's because of his ministry's incompetency and because they don't know where they're going.

That's our general uneasiness with this piece of legislation. We do not get the impression that the government knows what it's doing with regard to setting up this Advocacy Commission. For that reason, I support Mrs Sullivan's motion at this time, but should it fail, we will continue to act, as we have in the past, in a constructive manner to try to do the best we can.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I too am speaking in opposition to Ms Sullivan's motion. I'm frankly very concerned. I'm concerned about the picture that is being painted here and the discussion that has evolved. I'm concerned about Mr Wilson's description of Mr Malkowski's motive being indicative of some grudge



he has from some situation he's been in, a person who has demonstrated his concern through bringing forth this legislation and trying to work with the opposition parties as he has.

You speak of consultation, and I often wonder and worry about the use of that word. I think sometimes people assume that it means "You hear what I say and you do what I suggest," and it does not. It means simply that we listen to the very many words and advice of all the people.

We have listened to the medical profession and many different levels of the medical profession. We've listened to advocates, we've listened to families of vulnerable people and we have listened to those vulnerable people themselves. Their collective stories have indicated to us that it's extremely important that we very expeditiously move towards passing this legislation, that there are people out there who are seriously at risk and who are desperately in need of advocates and who need that service now, not later.

You say that you're concerned about this legislation. Your disagreement with policy does not indicate its deficiency. It indicates that we are in disagreement and that we see the situation differently from the way you do.

I would go back to what Mr Curling said. He is interested in saving the government because he fears that we will be embarrassed. I am interested in saving those people who need those services, those people who require the services of advocates, and I would put to you that we have come here this morning in cooperation and in a decision to listen once again to your concerns in an effort to bring forth the very best possible legislation that can be brought forth collectively.

This is not a time for adversity. This is not a time for opposition. It is a time to work together and to focus on those people who will most benefit. Yes, I speak in opposition to this motion.

**Mrs Sullivan:** I'm sure this will be the wrapup on this motion. I wanted to be very clear that, when Bill 74 came forward, both opposition parties voted in favour of the principle of the bill. We believe firmly and strongly that there should be a backup system, if you like, for vulnerable people, that there should be a support system, one which ensures and helps vulnerable people to support themselves, to access their rights and to gain their entitlements.

We believe this bill is fundamentally flawed, and the amendments which have been put forward, confusing and conflicting as they may be, in fact create more problems than they solve. The bill will not provide support for vulnerable people. It creates an adversarial atmosphere between the advocate, who will act in the shoes of the vulnerable person, and other people who have to respond in making things better for the vulnerable person. The health care institution, the vocational training premise, the educational institution and other places where advocacy is an important part of changing the life of vulnerable people will in fact be approached, as a result of this bill and the principles behind this bill, in an adversarial way, as enemies.

I think that's wrong. What we want to see is a redraft of the bill. We believe the bill is a useful one if done properly. The worst thing that could possibly happen and the worst support for vulnerable people is a bill that isn't right. If you're drafting legislation, you look at the problem and you define the problem. I think that has been done. I think people know what the problem is for certain people in our society and that we want to reach a solution in terms of coming to terms with that problem. Certain people are not able to access their rights. Certain people are not able to access their entitlements; certain people are not able to express their wishes and to have them made clear in a way that other people can respond to or act upon them.

We know there is a problem. We've seen it not only in the Lightman report but in other reports, whether it's reports provincially, nationally or internationally with respect to the disabled. We've seen a quite extraordinary book recently. It's Pat Capponi's book—it's called *Upstairs in the Crazy House*—and talks about some of the issues associated with the psychiatric survivors. We read a book, called *Madness in the Streets*, which parallels the issues in the American system that we faced as we were moving psychiatric patients outside of institutions without an appropriate infrastructure.

We know there are changes which should be supported and underlined for people who are physically and mentally disabled and developmentally disabled, the simplest things. Ensuring that there is access into a store or a school is only one area in which there has been some change, but perhaps not as much change as we want.

But if we are going to want to achieve the kind of support system we need for people who would have no other way of achieving their rights and entitlements and to have their system improved, that has to be done only in the context of a balance, and with the involvement not only of vulnerable people and people who will be speaking on their behalf or in their shoes—depending on how you see the role of the advocate; and there will be different roles for the advocate—but also with the cooperation and input of the facilities where they're living, of the institutions where they're receiving health care treatment, of the health care providers who know perhaps some of the nature of the vulnerability, but perhaps not all—the balance of families and friends who live, work and support in many ways the vulnerable people—and of the vulnerable people themselves, who will be able to speak on their own behalf to the greatest extent possible about what's needed.

We do not have that balance in this bill. We have created an approach which in fact moves the system away from that balance. It makes enemies of the family and friends. It sets them apart from the decision-making authority. It moves the employer groups away from the process by not involving them at all. It moves the health care provider away by indicating that the health care provider is someone to be suspicious of rather than to say, "If there is a bad actor in the health care provision field, let's root that out through other systems." If it's the college that should be acting, let's get at the college. But for



heaven sake, have them at the table; similarly with the institutions themselves or hospitals.

I recall, I think it was about two years, when the Hospital for Sick Children had to respond to a person walking around the corridors molesting children who were in that institution. There was an outcry in the community. Ultimately, the only way the Hospital for Sick Children could respond was by invoking the Trespass to Property Act.

1140

We look at a bill now where we would have wanton entry of advocates without the advocate being required to identify himself at the desk. I'll tell you that the Hospital for Sick Children is not going to allow that. It has another duty, and I think we have to recognize that. They have not had the opportunity to be involved in the creating of the balance that's necessary, the cooperative approach involving the vulnerable people themselves, involving health care providers, people who work with them in support groups, families, practitioners, facilities, educational institutions, all of those—opposition parties; we're willing to help.

We want a good bill. This is not a good bill. We need a redrafted bill. I firmly and honestly believe that. Frankly, I really hope this motion passes and that the government will pay attention to it and will come back with a bill through which all the organizations, groups and individuals who need to be consulted and who need to take part in its formation can be involved in that to create a system that works. That's how we'll have a support system for vulnerable people that matters.

**Mr Jim Wilson:** I just want to address, speaking to this motion, what Mrs Akande said and before her, Mrs Carter.

I have no doubt that their intentions are good, or they wouldn't be here and they wouldn't be putting in time on this committee. I have no doubt that what they believe they are accomplishing through this legislation, they truly believe. I thought Mrs Akande spoke eloquently about her beliefs and the need that's out there. As I said in my previous remarks, I don't disagree that there's a need.

But I get worried when the public has been sold this legislation as if it were going to correct some of these problems. It isn't. I think it drives a further wedge between families and their loved ones, particularly in the cases of schizophrenics. I think it drives a wedge between the health care workers who, in many cases, are sworn by oath to serve the public.

I think, as Mrs Sullivan said and as I've said many times previously, you can't sell this legislation as if it's going to help a lot of the things that we know are going to come out in the Lightman report and stories we read about every day in the paper. It doesn't do that, I guess, is the point. What it does is to set up, I think, and add a great deal of conflict in our current system. It sets up a truly adversarial system. It's the responsibility of legislators to correct these problems, not some arm's-length commission.

In the case of psychiatric patients, they have advocacy services now. What they need is further resources to correct the problems that are there in the system. When Mrs Carter talks about people being locked out of their duly

paid-for residences, that's illegal. There are laws that deal with that. This legislation isn't going to correct that problem, and don't go around this province telling people it will. We're aware of those problems. We'd probably be even more effective to give MPPs some resources so that we can better deal with those in our respective areas and then be able to go to one of the ministries and say, "Here's the problem." I don't need a team of advocates telling me the problem again and again. It may make some people feel better. It makes great political speeches, but it doesn't correct the problem, and I see this as where we differ in our opinions on this legislation.

It's illegal to steal people's allowances, but where are the resources to stop the stealing? Where are the resources to educate the people who are doing the stealing? Where are the resources to give people a backbone so they'll treat their fellow human beings better? This legislation doesn't correct that problem, nor does it cure it, and I don't think we should try and fool the public that it does; you know, once again tell us this problem exists. We know it exists.

Ernie Lightman's coming in soon with his report. It exists in our own backyards and we damned well should do something about it, not mask it in more political promises and speeches about pretending to have a cure.

Landlords not living up to their obligations are a problem in this province. Psychiatric patients and psychiatric survivors clearly get abused in this area more than anyone else, but this legislation, again, is not going to cure that.

You accuse me of rhetoric. Fine, it's fair ball; it's politics. But let's not tell the people of the province that this legislation cures, or even, in my opinion, goes any degree towards curing these problems that we all know exist. They've existed longer than I've been alive. If you really wanted to help the people, you would take a step back from this legislation for a time. Tell us you've got the money to even implement this legislation. I can't help but be suspicious that this is simply fulfilling some sort of promise when there's—

**Mr Winninger:** Are you still speaking to the motion?

**Mr Jim Wilson:** Yes, because the motion deals with withdrawal.

We can't help but be suspicious when you won't even talk about the financial impacts of this legislation. We have no idea where the resources are coming from. I don't know how future advocates can even have any confidence in this legislation when they, surely to goodness, don't even know where their salaries are coming from, when they, surely to goodness, realize that if we're to set up the new team of advocates and give them these sweeping powers and give the commission these sweeping powers, something's got to give in the system.

All I say is that it's unacceptable that the government allows these evils in our society to persist: that people steal people's allowances, that landlords don't live up to their obligations and that tenants often don't live up to their obligations. It's disgusting that people are locked out of their residences. Some of the treatment people receive in even the best of our facilities at times is abhorrent, and we are aware of this. What we'll find out, probably through

more advocates on the road, is that there are more problems out there.

We're aware that many of these problems now are overwhelming. We don't want to turn a blind eye to additional numbers being added to the problems. But other than dig out more problems and more numbers, I fail to see how this legislation helps. We need a commitment of resources, we're aware of the problems, as I said, and we should not be pretending that this legislation is really going anywhere towards correcting the problems that we're aware of.

That's my point and that's the premise I come from, the statement I made in the House a year ago. I too have listened and have heard the witnesses. I've heard families of Alzheimer's patients tell us this legislation doesn't help. They're past the advocacy; they're doing the advocacy for their loved ones. Where the brick wall is is the resources, the response from government to the problems.

On that note—I think I'm probably the last speaker on this motion—we should vote on the motion, but we feel very strongly that you cannot oversell this legislation in airy-fairy terms that are irrelevant to what the wording on the paper truly means.

**The Chair:** Having no further speakers on the motion by Mrs Sullivan, we'll proceed to the vote. All those in favour of Mrs Sullivan's motion?

**Mr Jim Wilson:** A recorded vote.

The committee divided on Mrs Sullivan's motion, which was negatived on the following vote:

**Ayes—5**

Curling, Miclash, Sterling, Sullivan, Wilson (Simcoe West).

**Nays—6**

Akande, Carter, Malkowski, Morrow, Wessinger, Winner.

**The Chair:** Being that it is close to the hour of 12 o'clock for a recess for lunch, I might suggest that the various groups get together to discuss what we're going to be doing this afternoon. We still have Bill 110 to do and this is the last day we will be meeting.

**Mr Morrow:** I think at this time it might be wise, just before we adjourn for lunch, to ask for unanimous consent to come back to Bill 110 this afternoon.

**The Chair:** It was my recommendation that we do that, but it wasn't finalized. Do we have unanimous consent that we'll proceed with Bill 110 when we come back at 2 o'clock? Agreed.

The committee recessed at 1153.



## AFTERNOON SITTING

The committee resumed at 1442.

CONSENT AND CAPACITY STATUTE LAW  
AMENDMENT ACT, 1992

LOI DE 1992 MODIFIANT DES  
LOIS EN CE QUI CONCERNE  
LE CONSENTEMENT ET LA CAPACITÉ

Consideration of Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Advocacy Act, 1992, the Consent to Treatment Act, 1992 and the Substitute Decisions Act, 1992 / Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1992 sur l'intervention, de la Loi de 1992 sur le consentement au traitement et de la Loi de 1992 sur la prise de décision au nom d'autrui.

**The Chair:** I call this meeting back to order. This afternoon we will be doing the clause-by-clause consideration of Bill 110.

**Mr Sterling:** On a point of order, Mr Chairman: I thought we were to meet at 2 o'clock. What has been the delay? We've been wanting to get on with these hearings and are trying to oppose as much delay as possible. What has been the delay this afternoon?

**The Chair:** The delay has been somewhat the same as what we've had all the way through these hearings, that when we go to a new bill, everybody's late bringing in the amendments and we have to allow the clerk time to get things together.

**Mr Winner:** I'd like to speak to that as well. It's actually in the interests of shortening these proceedings and making them run more smoothly that we sometimes have discussion with opposition members about certain positions that are going to be taken by government or by the opposition and try to resolve some differences ahead of time. I'm surprised, quite frankly, Mr Sterling, that you would oppose that procedure, which has worked so well in the past.

**Mr Sterling:** I think the Chairman is incorrect, if you permit me, Mr Chairman, in saying that there was a delay in getting the amendments in by the parties. As you know, neither the Liberal Party nor the Conservative Party has any amendments, so there was no delay on our part and we were sitting here shortly after 2 of the clock ready to begin.

I'm responding to the fact that this morning Mr Malkowski complained about the opposition parties delaying. We have specifically denied that and have said it's been the government that can't get its act together. We have just had another demonstration of the fact that they can't get their act together. It's two and three quarters hours since we broke, and if they can't figure out what they're going to do or plan the evening before what they're going to do, then that's a sorry state. I just want to say that the delay has been caused by the government, not by the opposition parties.

**The Chair:** Thank you, Mr Sterling, but in fairness, I think there have been delays all over. We'll proceed with clause-by-clause.

Do we have unanimous consent on the government reprint, section 2.1?

**Mrs Sullivan:** No.

**The Chair:** No, we don't have unanimous consent.

**Mrs Sullivan:** If I could just speak to that, as you know, this amendment proposal is out of order. We have, in the Consent to Treatment Act amendments, included a provision, which all the parties supported, that would ensure that the Child and Family Services Act, as it exists now, remains in place, is operative and has precedence over Bill 109.

There is also a time line established as part of that amendment that would enable the Ministry of Community and Social Services to come forward with changes that would clear up any additional difficulties of bringing the two acts together. Indeed subsequent to the discussions with respect to these bills, there may be other associated matters which should be included in that consideration, above those which were included in this particular amendment.

So we feel the appropriate thing to do, frankly, is to put the ball in the court of the Ministry of Community and Social Services to ensure that the protections and the rights that are provided in the Consent to Treatment Act are also reflected in the Child and Family Services Act and that that be done within the time line specified in Bill 109.

**Mr Winner:** I certainly appreciate the thrust of Ms Sullivan's remarks. However, the subsection we're now dealing with, subsection 2.1(1), is what I would submit to be a housekeeping subsection; it defines "nearest relative" in a manner consistent with the Consent to Treatment Act. It's a purely consequential amendment. I don't know whether Ms Sullivan is going so far as to say that a section like that should be ruled out of order. I don't think she is intending to say that section 2.1 should be ruled out of order, it being pure housekeeping.

**Mrs Sullivan:** If a request is being made for unanimous consent to consider subsection 2.1(1), the definition of "nearest relative," which as a result of the changes that have been made no longer exists, we would provide unanimous consent for consideration of that subsection of 2.1. We believe the other ones are out of order and therefore shouldn't be considered at this time.

**The Chair:** Do we have unanimous consent to consider subsection 2.1(1)? Agreed. Discussion? Mr Winner.

**Mr Winner:** As I just adverted to, this particular definition is one that's being updated and made consistent with the terminology in Bill 109, the Consent to Treatment Act. That's why we're seeking to retain the inclusion in Bill 110.

**The Chair:** Further discussion? Seeing no further discussion, we will move to the vote. All those in favour? Opposed? Carried.

Do we have unanimous consent to move government reprint 11.1? No, we don't have unanimous consent.

Next, do we have unanimous consent to move government reprint 17.1?

**Mrs Sullivan:** Can I ask for a clarification of this section? Does this in fact mean that any person who issues a licence in a city hall for people to be married must in fact do a capacity assessment before being allowed to issue the licence? As I recall, under the old provisions of the Marriage Act, the capacity test included intoxication through alcohol abuse or clear effects of drugs. What the city hall clerk is being asked to do here is to establish on reasonable grounds that a person lacks capacity to marry.

1450

**Mr Sterling:** What does this section have to do with the other sections?

**Mrs Sullivan:** I don't understand either why it's there.

**Mr Sterling:** Or was this just stuck in?

**Mr Winninger:** I understand that this is a consequential amendment flowing from Bill 74 and section 30 of that bill, as amended. If Linda Perlis is here—sorry?

I'm sorry. That was another section. Section 17.1 is included at the request of the Ministry of Consumer and Commercial Relations. There's certain language included in the Marriage Act, as it exists, that makes reference to the mentally ill or the mentally defective or "under the influence of intoxicating liquor or drugs." We're bringing this section up to date, as it were, and making it more consistent with modern thinking and modern expression.

**Mr Sterling:** So it has nothing to do with Bills 74, 108 or 109; this is just out of the blue. It's been added to the bill. It's not part of the debate on Bill 110.

**Mr Winninger:** Perhaps we could hear from Mr Fram on this particular amendment.

**Mr Steve Fram:** The request is made because it addresses the issue of capacity. Not that assessments are made, but because we were dealing with capacity in most aspects of Bill 108 and Bill 109, a totally out-of-date issue of capacity would be left in their legislation, and they requested it on that basis. The actual capacity to marry is established under federal law, and this just picks up for the issuers of licences the capacity established by federal law.

**Mr Sterling:** So the capacity that we're talking about here is not defined in provincial law?

**Mr Fram:** That's correct.

**Mr Sterling:** Is there any obligation now on people who either license a marriage or solemnize a marriage?

**Mr Fram:** Yes. Section 7 of the Marriage Act reads, "No person shall issue a licence to or solemnize the marriage of any person whom he or she knows or has reasonable grounds to believe lacks capacity to marry by reason of being mentally ill or mentally defective or under the influence of intoxicating liquor or drugs."

The last part is not so much of a problem, but the first part is, because developmentally handicapped people do marry. Generally speaking, the courts have held that the capacity to marry is not a very high capacity, that it does not require much understanding. The use of the terms "mentally defective" and "mentally ill," neither of which is used elsewhere in Ontario legislation any longer, is a particular problem for people who are developmentally handicapped and go to get married. That's why, in connection

with Bill 108, which addresses the issue of capacity, they requested that this amendment be made, so that the legislation in Ontario no longer has derogatory language.

**Mr Sterling:** I read the old section. We're changing the definition, which I don't really mind all that much, but we're now saying that you can issue a licence to somebody who's under the influence of intoxicating liquor or drugs.

**Mr Fram:** No, that's only one of the causes of incapacity.

**Mr Sterling:** But you've deleted that out; you've taken that out.

**Mr Fram:** There are quite a number of reasons why people can lack capacity. One of the reasons under federal law is that people are of the same gender. Under federal law, that is not permitted. Under Ontario law, it would appear to be, because the only reasons being stated in the Ontario legislation are "mentally ill or mentally defective." It more accurately reflects the federal law governing the matter to stop at "lacks capacity to marry."

**Mrs Sullivan:** As I look at Bill 110, this is an act to amend certain statutes consequent upon the enactment of the advocacy bill, the consent to treatment bill and the substitute decisions bill. I understand what the ministry wanted here, and I think Mr Fram has done a terrific job of trying to argue for maintaining this here, but I think what happened was that the ministry really wanted to update its language. In fact this is not a consequential amendment with respect to the bills that we're dealing with. It's out of order and I don't think we should proceed with it.

**Mr Sterling:** I'd have to say that I agree. I would ask you to rule on whether it's in order, because it's not fair to our other colleagues in the Legislature who did not debate or see this bill on second reading. This was not included in Bill 110 at that time. Therefore, I'd ask you whether this section is in order.

**The Chair:** It's not in order and that's why we're asking for unanimous consent. Do we have unanimous consent?

**Mr Sterling:** No.

**Mr Winninger:** Think about it before you shake your heads.

**The Chair:** No, we don't have unanimous consent. Proceed to the government reprint, subsection 18(1).

**Mr Winninger:** This involves an amendment and a deletion, and I believe there is agreement that it carry.

**The Chair:** Agreed? Carried.

Government reprint, subsection 18(5). Agreed? Carried.  
Government reprint, subsection 18(8.1).

**Mrs Sullivan:** I believe this amendment is out of order as well, and I'd like to hear an explanation before we proceed.

1500

**Mr Winninger:** Mr Sharpe is here to explain that amendment. As most people here know, Mr Sharpe is an expert on the Mental Health Act.

**Mr Gilbert Sharpe:** I suppose I am.

**Mr Winninger:** I'm looking to Mr Sharpe for a very specific explanation of the amendment in subsection (8.1).



**Mrs Sullivan:** Perhaps we could have a ruling from the clerk or a ruling from the Chair as to whether in fact subsection (8.1) is out of order.

**The Chair:** The Chair gives rulings, not the clerk.

**Mrs Sullivan:** Yes, I know, on very good advice from the clerk, usually.

**The Chair:** Thank you. We'll stand this down for a moment.

**Mr Winner:** Just for the record, we don't believe that section's out of order at all. Before any ruling is made, we'd appreciate an opportunity to make submissions.

**Mrs Sullivan:** Okay.

**Mr Sterling:** Can I just get this clear, Mr Chairman; dealing with—

**The Chair:** Subsection 18(8.1).

Mrs Sullivan, the Chair agrees that it is out of order because it wasn't in the original bill.

**Mr Winner:** On a point of order, Mr Chair: I am having some difficulty with this process. If Ms Sullivan says she believes it's out of order, surely it's appropriate, in the interests of natural justice and fair hearings, to hear why it is in order before a ruling is made. I have some difficulty with the procedure. This happened this morning and we let it ride.

**The Chair:** It's not debatable.

**Mrs Sullivan:** Mr Chair, what I would appreciate is an opportunity to hear from counsel the rationale for the inclusion of this section so that unanimous consent to allow that section to proceed could or could not be given.

**The Chair:** That sounds fair.

**Mr Winner:** Mr Sharpe has some comments he's going to make in regard to this.

**Mr Sharpe:** I thought, if it's all right, I could start off by making a few preliminary comments. Gail Czukar, who litigates matters before the board, has some experience in that, and perhaps her comments may also be useful. This deals with the provision in the Mental Health Act, which is repeated in the next provision, subsection (9), that recognizes a kind of privilege or protection that exists in many jurisdictions that a patient has authority to say he or she doesn't want parts of his or her clinical record put into evidence in a court hearing or before a tribunal.

That could only be overridden by a judge declaring it to be essential in the interests of justice. This was put in in 1978, when we were amending the Mental Health Act. Most jurisdictions have it in their evidence acts, but since our Evidence Act, for various reasons, was not amended to do this, we did it here.

There have been some recent cases, one in particular, that have interpreted this in a way that might be seen as preventing valuable evidence to be put into review board hearings on mental competency reviews, in Bill 109, for example, without going to court and getting an order to override. The intention in 1978 was that the provisions of the Mental Health Act and the proceedings under that act before the review board would not be overridden by this, but it was other tribunals and courts and so on. So to

require, if a patient challenges the doctor's finding that he or she is not capable, and in order to—

**The Chair:** Excuse me, Mr Sharpe. We're talking to subsection 18(8.1).

**Mr Sharpe:** Oh, sorry. There are two (8.1)s on the page. I'm getting ahead of myself. I had naturally assumed you would be—

**Mrs Sullivan:** You were sounding pretty good there.

**Mr Sharpe:** Perhaps we could keep all that on the record when the issue arises of order on the other one.

**Mr Winner:** Pull out the other cassette.

**The Chair:** Government reprint 18(8.1).

**Mr Sharpe:** This one is easier actually. There are a number of provisions in the rest of the bill that have been added. For example, in subsection 35(4.1) to come, the advocate is given access to the clinical record in order to be able to provide advocacy services within the facility. There are some other provisions as well, like the board, in another (8.1) that I was speaking about at the bottom.

The way in which the act was originally drafted in 1978, the only provisions that one had to make section 35 subject to were these that are referenced in subsections (3) and (5). So all that subsection 18(8.1) at the top of the page does is say that it is subject to the whole section because we're adding other provisions, like the advocate's access, to this.

Gail, do you want to carry on from that?

**Ms Gail Czukar:** That's right. That's what this subsection 18(8.1) does. It states that there are additional exceptions, like access by the new board, the Consent and Capacity Review Board, to records for purposes of proceedings before that board and so on. This amendment just makes clear that all of the exceptions in this section apply to the general duty to keep records and information confidential.

**Mr Sterling:** Does anybody have a copy of the particular section that we're talking about now?

**Mr Doug Beecroft:** Existing subsection 35(2) of the Mental Health Act reads, "Except as provided in subsections (3) and (5) and section 36, no person shall disclose, transmit or examine a clinical record." The proposed amendment is to strike out the reference to subsections (3) and (5) and insert this section, so that it would read, "Except as provided in this section and section 36."

**Mr Sterling:** I'm afraid I'm going to have to understand this before I agree, Mr Chairman. It may be quite an important thing.

**The Chair:** Perhaps Mr Sharpe can further clarify.

**Mr Sharpe:** Section 35 presents a general prohibition. That's the triggering mechanism. It says that you can't disclose records containing this private psychiatric information, and then there are penalties if you do that, unless you have consent or unless it's required by court order. These are the sorts of things set out in subsection (3) and subsection (5) normally that have been in the act for a long time.

What we're doing now is intending to add other people who can have access without consent within this section, such as the advocate. If advocates are going to provide services to this population, as they're now doing, the past practice has been to appoint them under the Ministry of Health Act. There's a section, section 5, where the minister can appoint inspectors who have powers to go in and look at things, and the Mental Health Act has a similar section.

In 1978, when this provision was first put into the Mental Health Act, in section 35, saying no person shall disclose and so on, and then ultimately when the advocate program first developed in the early 1980s, the question was raised about how the advocates were going to be able to have access to these records. They're dealing with vulnerable people, where it may not be always possible to get a consent as required under subsection 35(3). We appointed the advocates under the Mental Health Act, subsection (5), with inspector authority, and of course every time an advocate was changed you'd have to revoke the previous appointment and make new ones.

Given that we now have rights advisers and advocates and a public guardian and trustee who are being appointed who under certain circumstances would have to have access to this information, and we're trying to add them later on, we want to make sure they can have unfettered access without the administrator of the hospital saying, "But under 35(2) I can't give it to you."

That's why it's there. The concern is, unless we do this, the public guardian and trustee, the advocate and the board won't be able to have access to the records. When we drafted the section originally, it wasn't contemplated that these people would exist.

**The Chair:** Are the committee members comfortable with the explanation?

**Mr Sterling:** I think what I'm being told is that if I don't trust this commission and the way this Bill 74 has been set up, then I should object to this amendment being allowed to pass. That's what I'm being told, and after this morning, I don't trust this commission under the rules we have had under Bill 74.

**The Chair:** Possibly now would be the time to ask whether we have unanimous consent on the government reprint 18(8.1).

**Mr Sterling:** No.

**The Chair:** No, we don't have unanimous consent. Possibly we could have a two-minute recess, and I would ask none of the committee members to leave the room, please. This committee stands recessed for two minutes.

The committee recessed at 1512.

1527

**The Chair:** I call this meeting back to order. There's been a fair bit of discussion over that brief break.

**Mr Winninger:** I wonder if we could return for a moment to section 11.1, which deals with the Freedom of Information and Protection of Privacy Act, and whether the opposition members might be prepared to reconsider their position in regard to section 11.1.

Just for clarification, clause 11.1(1)(b) would enable an individual's attorney under a continuing power of attorney, the individual's attorney under a validated power of attorney for personal care, the individual's guardian of the person or the individual's guardian of property, to gain access to information that a person would have under the Freedom of Information and Protection of Privacy Act.

I suggest, given statements made by opposition members earlier in these proceedings, that they would be concerned, as I would be, were substitute decision-makers not able to gain the access they need to a person's files in order to make the important decisions regarding personal care or decisions regarding disposition of property. I realize the opposition members have already denied unanimous consent to consideration of this subsection and particular emphasis was laid on the reference to the Advocacy Act in subsection (2). I'm just wondering whether the opposition members might be prepared to accord unanimous consent to consider clause 11.1(1)(b) again.

**The Chair:** Do we have unanimous consent? Agreed. Debate on 11.1(1)(b)?

**Mr Winninger:** Mr Chair, I think I've already set out the rationale as to why it's desirable that this amendment be approved and I believe the opposition members are not opposing that particular amendment.

**Mr Sterling:** I agree with that amendment.

**The Chair:** Thank you, Mr Sterling. Seeing no further debate, we'll proceed to the vote. All those in favour of government reprint 11.1(1)(b)? Opposed? Carried.

Government reprint subsection 18(8.1). Mr Winninger.

**Mr Winninger:** Now that we've had a fairly extensive explanation of the rationale as to why subsection 18(8.1) is included in Bill 110, I wonder if we could have some indication from the opposition as to whether it'll agree to unanimous consent to consideration.

**The Chair:** The committee is agreed to move government reprint subsection 18(8.1)? Do we have unanimous consent?

**Mr Sterling:** Mr Chairman, just a minute. What are we doing now?

**The Chair:** Government reprint subsection 18(8.1).

**Mr Sterling:** What consent are you seeking?

**The Chair:** We're asking for unanimous consent.

**Mr Sterling:** To what?

**The Chair:** To move it.

**Mr Sterling:** Is this the one I objected to before?

**The Chair:** It's one of them.

**Mr Winninger:** Mr Sterling, I don't think you objected very strenuously on this particular section. You were just in your "no" mode.

**Mr Sterling:** Unfortunately, I was having another conversation over here to try to determine what happens down the road as a result of this objection. I continue to object.

**The Chair:** You continue to object?

**Mr Sterling:** Yes.



**The Chair:** We don't have unanimous consent.

We proceed to government reprint subsection 18(10.1).  
Discussion? Agreed?

**Mr Sterling:** Where are we now?

**The Chair:** Government reprint subsection 18(10.1).  
Agreed?

**Mr Sterling:** It's in order anyway, isn't it, Mr Chairman?

**The Chair:** Yes, it's all in order. Agreed? Carried.

Government reprint subsection 18(10.2). Discussion?  
Agreed? Carried.

Government reprint subsection 18(17). Discussion?  
Carried.

Government reprint subsection 18(33). Mr Winninger.

**Mr Winninger:** I wonder if I could call for a 15-minute recess at this point.

**The Chair:** This committee stands recessed for 15 minutes.

The committee recessed at 1535.

1612

**The Chair:** I call this meeting back to order. We're on the government reprint 18(33). Agreed? Carried.

Government motion on 18(51).

Mr Winninger moves that subsection 18(51) of the bill, as reprinted to show the amendments proposed by the Attorney General, be amended by striking out "section 16" in the sixth and seventh lines and substituting "section 15."

Motion agreed to.

**The Chair:** Any discussion on the government reprint section 25?

**Mr Winninger:** Carried.

**The Chair:** Just discussion; it's the whole section. Seeing no discussion—

**Interjections:** Carried.

**The Chair:** That's a section; it's not necessary.

Further discussion on Bill 110? Seeing no further discussion on Bill 110, that's done.

**Mrs Sullivan:** Mr Chairman, I move the adjournment of the committee.

**The Chair:** Mrs Sullivan moves adjournment of the committee. All those in favour? Opposed? Carried. This committee stands adjourned until October 5.

The committee adjourned at 1614.

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- \* **Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)
- \* **Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)
- \* Akande, Zanana L. (St Andrew-St Patrick ND)
- \* Carter, Jenny (Peterborough ND)  
Chiarelli, Robert (Ottawa West/-Ouest L)
- \* Curling, Alvin (Scarborough North/-Nord L)  
Harnick, Charles (Willowdale PC)  
Mahoney, Steven W. (Mississauga West/-Ouest L)
- \* Malkowski, Gary (York East/-Est ND)  
Runciman, Robert W. (Leeds-Grenville PC)
- \* Wessinger, Paul (Simcoe Centre ND)
- \* Winner, David (London South/-Sud ND)

#### **Substitutions / Membres remplaçants:**

- \* Miclash, Frank (Kenora L) for Mr Mahoney
- \* Sterling, Norman W. (Carleton PC) for Mr Harnick
- \* Sullivan, Barbara (Halton Centre L) for Mr Chiarelli
- \* Wilson, Jim (Simcoe West/-Ouest PC) for Mr Runciman

\*In attendance / présents

#### **Also taking part / Autres participants et participantes:**

Czucar, Gail, legal counsel, Ministry of Health  
Fram, Steve, counsel, policy development division, Ministry of the Attorney General  
Malkowski, Gary, parliamentary assistant to the Minister of Citizenship  
McKague, Carla, counsel, Office for Disability Issues, Ministry of Citizenship  
Sharpe, Gilbert, director, legal services branch, Ministry of Health  
Winner, David, parliamentary assistant to the Attorney General

**Clerk / Greffière:** Freedman, Lisa

#### **Staff / Personnel:**

Beecroft, Doug, legislative counsel  
Hopkins, Laura, legislative counsel





## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 5 October 1992

### Standing committee on administration of justice

Advocacy Act, 1992,  
and companion legislation

Chair: Mike Cooper  
Clerk: Lisa Freedman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Lundi 5 octobre 1992

### Comité permanent de l'administration de la justice

Loi de 1992 sur l'intervention  
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Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 5 October 1992

The committee met at 1550 in room 228.

### ADVOCACY ACT, 1992, AND COMPANION LEGISLATION LOI DE 1992 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Consideration of Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Loi concernant la prestation de services d'intervention en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1992 and the Substitute Decisions Act, 1992 / Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1992 sur le consentement au traitement et de la Loi de 1992 sur la prise de décisions au nom d'autrui.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order today on orders of the House which state: "After routine proceedings on the committee's first regularly scheduled sitting day of the fall meeting period of the House, the Chair of the committee shall, without further debate or amendment, put every question necessary to dispense with all remaining sections of the bills and any amendments thereto. The committee shall be authorized to sit beyond the adjournment of the House."

We'll proceed by first of all dealing with the out-of-order amendments.

**Mr Paul Wessenger (Simcoe Centre):** I'd like to withdraw my amendment to section 25.1 of the Advocacy Act. It's an addition, subsection (3).

**The Chair:** Okay. Thank you.

**Mr Gary Malkowski (York East):** I would also like to withdraw section 25.1.

**The Chair:** Thank you. Okay.

**Mrs Barbara Sullivan (Halton Centre):** Mr Chairman, I'm sure we will want to have a look at the implications of the withdrawal of the government motion on 25.1. I would like to suggest to you that this once again follows a pattern of confusion and unpreparedness in terms of dealing with the issues before this committee. As a result of changes which have been made to Bill 109, I too have some amendments to withdraw, but in the course of doing so I want to make a point that has been made in a

singularly effective series of letters to the Premier with respect to Bill 74.

The first one comes from the College of Physicians and Surgeons of Ontario, and it says in the body of the letter:

"When new amendments which dramatically change the intent and direction of these bills suddenly appear in the midst of clause-by-clause debate, as they did in the case of Bill 74, it only confirms the growing fear that these bills are not being carefully considered.

"Many of these amendments were withdrawn the same day and then reintroduced in yet another amended version a week later. Hurried telephone conversations with Ministry of Citizenship officials trying to amend the amendments in order to meet some arbitrary deadline is not consultation."

The college goes on to say:

"The Ministry of Health had announced its intention to pursue this matter"—that is, the matter of the confidentiality of patient records—"in a considered and consultative fashion under separate legislation. Yet the Ministry of Citizenship appears to be literally making up the government's policy on confidentiality on the fly.

"The college's concerns about the government's ability to produce workable, understandable and consistent legislation have only increased in the past few weeks. The rushed atmosphere and confusing process to which these bills have been subjected have done little to guarantee that the interests of patients or vulnerable people will be protected. It has only served to alienate and frustrate those groups who must work with and implement this law in its final form."

**The Chair:** Mrs Sullivan, excuse me.

**Mrs Sullivan:** Mr Chairman, on my point of order: I want to continue because it relates directly to the parliamentary assistant's withdrawal of section 25.1. This evening the Minister of Citizenship will be meeting with the Ontario Hospital Association. Tomorrow morning the minister will be meeting with the College of Physicians and Surgeons. This afternoon I understand the minister will be meeting with the Ontario Medical Association. Other organizations, such as the College of Nurses of Ontario, the Registered Nurses' Association of Ontario, the Ontario Nurses' Association, the Ontario Friends of Schizophrenics and the Ontario Nursing Home Association, have not at this point been invited to any meetings. Clearly, what is occurring here is that a consultative process is going on when we are now in the final stages of voting in committee process on these bills. This is absolutely irresponsible and unconscionable.

I have amendments to withdraw completely as a result of amendments that were made and approved by the committee to the Consent to Treatment Act, which are reflected in Bill 74. In those circumstances it's reasonable to withdraw those amendments. It is not reasonable for amendments to be withdrawn, changed or altered simply because

of the inadequate work, as I've said before, by enthusiastic amateurs in the preparation of this bill. There has never been a worse scenario of putting forward government legislation in this Parliament in its entire history. This is an absolutely ludicrous issue.

**The Chair:** Your point?

**Mrs Sullivan:** My point is that these entire bills should be reprinted. Nobody knows what's in them, nobody knows what the intent of the government is with respect to Bill 74. The amendments are conflicting and confusing. They've been put forward one day, taken away the same afternoon; another one is put forward. The drafting has been sloppy, and frankly the intention of the government, which has been ideologically driven, has been one that is—I can't express it in any way other than by saying their performance has been unconscionable.

**The Chair:** Thank you, Ms Sullivan, but you do not have a point of order. I understand your point of view and I'm having no direction from any of the ministers of rewriting or withdrawing any of the bills. We will proceed with the votes.

**Mrs Sullivan:** They're not? All right. I have amendments to withdraw to Bill 74 as a result of changes made to the Consent to Treatment Act approved by the committee. I will withdraw my amendment to subsection 3(2), I will withdraw my alternate 2 amendment to subsection 6(1) and I will withdraw my alternate 2 subsection 7(1)(d).

**The Chair:** Excuse me, which one?

**Mrs Sullivan:** Subsection 7(1)(d).

**The Chair:** Alternate 2?

**Mrs Sullivan:** Yes, and I ask for advice from the Chair as to whether my amendment to clause 7(1)(k.2) is indeed the same as the government amendment which has recently been put forward.

I would also like a ruling from the Chair as to whether the new government amendments to subsections 25(1) and 25(2) are in order. In my view, they change the scope of the act from vulnerable persons to all persons—whether vulnerable, disabled, 65 or not—and enable an advocate to access all records relating to any patient or any person, and also any kinds of records, without limitation. I think that is absolute nonsense, and frankly I believe it's been deliberately put forward.

**The Chair:** Thank you, Ms Sullivan. On subsection 7(1)(k.2), they are different, so it's up to you whether you choose to withdraw yours.

**Mrs Sullivan:** I will let mine stand.

**The Chair:** Thank you. Mr Malkowski.

**Mr Malkowski:** I'd like to withdraw subsection 34(2.1).

**The Chair:** Thank you. Seeing none further, we'll proceed. Mr Malkowski.

**Mr Malkowski:** Sorry; nothing more.

1600

**The Chair:** Okay. We'll proceed on the amendments that are either out of order or—

**Mrs Sullivan:** On a point of order, Mr Chairman: My understanding is that with subsection 34(2.1), which is a

motion put forward by the government, which would mean that "a person who refuses to allow an advocate to enter a private dwelling without a warrant for entry" would not be subject to penalty, the government, in putting forward that amendment, appears to have changed its policy. Once again it appears to have changed its policy. We cannot vote on this stuff without having any kind of indication of what the hell the policy of the government is.

**The Chair:** As you are aware, Mrs Sullivan, there are no comments or questions today; it's just voting?

**Mrs Sullivan:** I think the public has a right to know, Mr Chair.

**The Chair:** I agree, Mrs Sullivan, and I hope that will be done in the future.

**Mrs Sullivan:** Ha. Dream along.

**The Chair:** On the motions that are out of order, the Progressive Conservative motion on subsection 17(2), I'd rule that this motion is out of order as the identical motion was moved by the Liberals and subsequently defeated.

On the Progressive Conservative motion on subsection 18(1.1), again this motion is out of order as the identical motion was moved by the Liberals and subsequently defeated.

On the government motion on subsection 25(1), Mr Winner?

**Mr David Winner (London South):** We believe that these amendments are in order, basically for four reasons.

First of all, the access contemplated under that section is without personal identifiers, and it's no different than the access currently provided on a widespread basis for clinical and demographic research purposes.

Secondly, the access is for the sole purpose of detecting and demonstrating the existence of systemic policies or practices that may be detrimental to vulnerable persons.

Thirdly, unless there's a reference point in the records of non-vulnerable people, the abuse of vulnerable persons might be impossible to demonstrate. It is similar to the use of control groups in research.

Lastly, this access to the records of all persons is analogous to the entry rights accorded to advocates to the premises of persons who are not vulnerable, and both the rights of entry and the rights of access to records are necessary to enable advocates to provide, in the one case, case advocacy, and in the other, systemic advocacy, to vulnerable persons.

**The Chair:** Further?

**Mrs Sullivan:** We will not give unanimous consent for this motion to proceed.

**The Chair:** I haven't asked for unanimous consent yet. I'd like to explain my ruling.

Subsection 25(1) is out of order. It allows the advocate possible access to information of people not necessarily vulnerable and not contemplated within the scope of the bill. This amendment was also broader than the previous motion, and this section was ruled out of order. I might state that there will be another chance in committee of the whole if the government wishes to do something on this.



My understanding is that we do not have unanimous consent to allow this motion? Thank you.

On the Liberal motion subsection 25(5), this motion is out of order as it relates to a subsection that does not exist. If we could get unanimous consent, we would allow this motion to be moved under subsection 25(3).

**Mrs Sullivan:** Mr Chairman, I believe it was a typographical error in the drafting.

**The Chair:** Yes, I agree that's what it was. Do we have unanimous consent? Agreed?

**Mr Winninger:** We are agreed.

**The Chair:** Agreed. Thank you.

**Mr Norman W. Sterling (Carleton):** One moment, Mr Chairman. Which motion are we now talking about?

**The Chair:** Subsection 25(5). There is no 25(5). It should have been 25(3).

**Mr Sterling:** Where can I find it in my—

**The Chair:** In the package of out-of-order amendments.

**Mr Winninger:** On a point of order, Mr Chair: There is a 25(5). It's a handwritten motion.

**The Chair:** Yes, but there is no 25(5) in the bill.

**Mr Winninger:** Okay.

**The Chair:** It was meant to be subsection 25(3).

**Mrs Sullivan:** Mr Chairman, I believe that because this is similar to an amendment which was made to 24(5), when legislative counsel were numbering that section they just put the same issues in. I do have that motion copied and I can distribute that to everybody on the committee.

**The Chair:** Thank you. Mr Sterling, do we have unanimous consent?

**Mr Sterling:** Yes. You have my consent, anyway.

**The Chair:** Thank you. On the government motion, clause 37(1)(e.1), this motion is also out of order, as it relates to the wrong section. If we could have unanimous consent to allow this motion to be moved to clause 36(1)(e.1)—do we have unanimous consent? Agreed?

**Mrs Sullivan:** Agreed.

**Mr Jim Wilson (Simcoe West):** One moment, Mr Chairman.

Agreed.

**The Chair:** Agreed? Thank you.

**Mr Malkowski:** Mr Chair, I have the correction here. We have copies of that to be handed out.

**The Chair:** Thank you. On the government motion, clause 50(6)(b), this amendment is out of order, as it amounts to a direct negation of Mrs Sullivan's motion to the same clause. This is on a government motion—

**Mr Sterling:** Which bill is this?

**The Chair:** Bill 108; my apologies. Government motion, clause 50(6)(b).

**Mr Mark Morrow (Wentworth East):** Point of order, Mr Chair: Wouldn't it be wiser to dispose of one bill at a time?

**The Chair:** These are just the out-of-order amendments that we're dealing with right at the moment.

**Mr Morrow:** Thank you.

**Mr Jim Wilson:** Mr Chairman, could you repeat the ruling on that?

**The Chair:** This amendment is out of order, as it amounts to a direct negation of Mrs Sullivan's motion to the same clause.

**Mr Winninger:** I would ask for unanimous consent that notwithstanding it being ruled out of order, we still vote on it.

**The Chair:** Do we have unanimous consent?

**Mr Jim Wilson:** No.

**Mr Winninger:** I understood we did.

**Mrs Sullivan:** Mr Chairman, perhaps it might assist the committee if on this occasion you allow counsel to the ministry or the parliamentary assistant to speak to this particular amendment.

**Mr Winninger:** Perhaps I'll allow Mr Fram to address it. It's a technical sort of amendment that's required as a result of the way in which Ms Sullivan's amendment was originally worded.

**The Chair:** Mr Fram, could you please identify yourself for Hansard.

**Mr Steve Fram:** Steve Fram, Ministry of the Attorney General.

The amendment is necessary in order to make the Ulysses contract work. If the standard that was in Ms Sullivan's provision isn't changed, we fear that the courts will find that the Ulysses contract, because it sets such a low threshold for making a power of attorney of this kind and such a high threshold for getting out of it, will find it a trap and will strike out the whole provision.

**The Chair:** Thank you, Mr Fram. Do we have unanimous consent to allow this motion to be moved?

1610

**Mr Sterling:** Could I just ask one point of clarification? I'm sorry, but reading the reprinted bill under clause 50(6)(b), I have in the third line, "was capable of personal care."

**Mr Fram:** Yes, and that was changed by a Liberal motion to "capable of making a power of attorney for personal care."

**Mr Sterling:** Okay, now you want to go back to the reprint.

**The Chair:** Do we have unanimous consent for this motion? Agreed? Agreed.

Also on Bill 108, government motion on subsection 52(2): This motion is out of order, as it makes no current sense.

Could we have unanimous consent to change the words in the motion to substitute "personal care" for "managing property"?

**Mr Winninger:** A point of order, Mr Chair: The suggested change would be from the words "managing property" to "managing personal care," so it would read "incapable of personal care" as opposed to "incapable of managing property."

**The Chair:** Substitute "personal care" for "managing property."

**Mr Winner:** Exactly.

**The Chair:** Do we have unanimous consent?

**Mr Sterling:** This is restricting the power of the court to appoint a guardian, as I read it. Is that not correct?

**Mr Winner:** Sorry, I missed where that question was coming from.

**Mr Sterling:** Under section 52 of Bill 108, the court can appoint a guardian for a person who is incapable of personal care and as a result needs decisions to be made on his or her behalf by a person who is authorized to do so. This is a qualification of what the court may or may not do.

**Mr Winner:** Quite frankly, Mr Sterling, that was an error in the amendment. The reference to "managing property" was there in error.

**Mr Sterling:** I know it was an error. I'm saying, though, that we have an opportunity to stop this amendment by ruling it out of order, okay? Basically, what I'm saying is that you're trying to qualify the court's right to appoint a guardian by adding this amendment. Why do you want to qualify the court's authority?

**Mrs Sullivan:** I think what we're seeing here is a policy change that has been little discussed in committee. We see this as a companion amendment to an amendment that the government is proposing to subsection 22(3), where I suspect that what the government is doing is attempting to bring in a new level of activity for the court to allow for assisted decision-making. But we have not had that discussion, and the government has not indicated that is where it's interested in going through any other section or in any way before the committee. So, basically, what we are seeing here is a policy change.

**Mr Winner:** Perhaps the committee could hear from Mr Fram. He can indicate that it's not a radical departure from what was here in the first place.

**Mr Fram:** It has always been the intention of the various governments that guardianship, because it takes away all rights in connection with a person, be the last alternative when you can't use powers of attorney for personal care, when you can't use a Ulysses contract, where you can't use other forms of a Consent to Treatment Act. The last thing in the world we want is too much guardianship in the province. This really says: "Guardianship is the last resort. If you can't get the decisions in another way, court-appoint the guardian, but otherwise look to less restrictive means."

**The Chair:** I'll ask once again: Do we have unanimous consent to change the words to the motion?

**Mr Sterling:** I'd like to discuss this again after we've gone over section 22.

**The Chair:** After when?

**Mr Sterling:** We may have a discussion about subsection 22(3). There may be unanimous consent around this table to talk about it as we go through it. I guess I'm saying that I am not prepared to give unanimous consent at

this moment, but might be when we get to subsection 52(2) of Bill 108.

**The Chair:** When we get there in our voting, if we have unanimous consent, we could have some discussion.

On Bill 109, Progressive Conservative motion, subsection 10(1): This motion is out of order because it deals with the identical subject matter of a motion that has already been defeated.

**Mrs Sullivan:** Mr Chairman, we'll give unanimous consent for that motion to be included again.

**The Chair:** Is there unanimous consent to allow this motion to be moved? Agreed.

Bill 110, government motion, subsection 11.1(2): This amendment is out of order as it amends a statute not in the original bill. Is there unanimous consent to allow this motion to be moved?

**Mrs Sullivan:** No.

**Mr Jim Wilson:** No.

**The Chair:** We don't have unanimous consent?

**Mr Winner:** Perhaps we might hear from counsel to Citizenship as to why it's necessary this be included.

**The Chair:** Could you please identify yourself for Hansard?

**Ms Linda Perlis:** Linda Perlis, legal counsel, Office for Disability Issues. It was included at the insistence of the Information and Privacy Commissioner, who wished that bill to contain a complete code of all pieces of legislation that would be exempt from the application of the Freedom of Information and Protection of Privacy Act or any sections in any pieces of legislation. The government has tabled amendments to sections 30(1.2) and 31(1.2) which will effectively accomplish the same result, but not in the manner particularly requested by the privacy commissioner himself.

**The Chair:** Do we now have unanimous consent? No, we don't.

On the government motion, subsection 18(8.1) alternate 1: This amendment is out of order because subsection 35(2) was not opened in the original bill.

**Mr Wessinger:** Could we ask for unanimous consent to have this—

**The Chair:** Is there unanimous consent to allow this motion to be moved?

**Mrs Sullivan:** Could we have some explanation from the parliamentary assistant to the Minister of Health?

1620

**Mr Wessinger:** I'll ask counsel to indicate the reason for this. We have an alternative which accomplishes the same purpose, but it's not as good a way of wording it.

**The Chair:** Could you identify yourself for Hansard?

**Mr Gilbert Sharpe:** Gilbert Sharpe. As we discussed before in committee, alternate 1 would permit an amendment to the Mental Health Act to recognize other provisions within section 35 of the act to permit access by persons other than through consent or discretion of the officer in charge. The way it was originally drafted, it only refers to internal references of sub (3) and sub (5). Now



we're adding access by an advocate, so this would permit disclosure by the officer in charge at the request of the advocate as well. Alternate 2, which has also been filed, would accomplish the same thing, but it would be much more awkward to do it that way. The government was hopeful that the way it was originally put together in the bill would be the way it would be permitted to go through as an amendment to the Mental Health Act.

**The Chair:** Do we have unanimous consent to allow this motion to be moved?

**Mr Sterling:** Not at this time.

**The Chair:** We don't. Okay, if there is no request for a 20-minute recess on Bill 74, we will begin to vote.

**Mr Sterling:** On a point of order, Mr Chairman, before we begin: I realize we have orders of the House to go through these motions one by one. As I understand it, there will not be an opportunity for debate at this stage.

**The Chair:** That's correct.

**Mr Sterling:** I feel that the motion this committee is taking at this time is not going to lead to much fruit. I would have really liked us to have postponed our hearings for a four- or five-week period so we'd be able to consult, as the Minister of Citizenship is going to consult, with various groups. My desire would have been to come back here and go through these things in earnest and talk about them so that we could give consent in certain cases, where it is reasonable and logical to do so.

I'm quite sure my House leader is willing to agree to that kind of agreement. I know there has been an accommodation on the part of the Minister of Citizenship, with whom Mr Wilson and I met this morning, and with whom Mrs Sullivan would have met, but she wasn't well enough.

Having said that, the government is within its rights in terms of the rules that have been established and the orders that have been set down. I guess you, Mr Chairman, must follow those unless there's some move by the government to alter the process at this time.

I just think we're going to get into committee of the whole House late in November and really not have worked this thing through with the proper knowledge being dispersed out to the various communities involved. The bill, as I understand it, is not going to receive third reading until the end of November now, and it just seems to me that we would bear more fruit if we had a little more time to talk about these amendments in this committee.

I also want to say that I haven't detected in this committee, from either the government or the opposition, a desire by anybody to really drag the debate on any particular section that we have discussed. Sure, there's been heated debate over some of the sections and we've tried to put forward our arguments, but I think it can be fairly said that the Liberals, the Conservatives and the government have not extended the debate past the point of being reasonable. Sometimes we got tired late at night, and the debate did drag on, but I think that was more a function of the timing of what was happening.

I think the pacing of this legislation requires that this committee give it a little more time. I wanted to say that before we started the votes. It would allow us to be a little

more cooperative with regard to putting the best bill forward in the best possible language we are capable of, even if we don't agree with different parts of it.

**The Chair:** As you know, the committee has made every effort to try to get the House leaders to extend the time limit, and they have refused; they have tied us down to time limits. That's why we're proceeding the way we are. There will be opportunity at third reading for further discussion and amendments.

Interjection.

**The Chair:** In the committee of the whole. My apologies.

**Mrs Sullivan:** It's clear that there's a substantial body of opinion, not only in this committee but outside of this committee, that with the number of amendments and the substantial changes that have been made to the bills, the bills should be reprinted and recirculated. We think there should be an opportunity for written submissions from those affected.

As I look through the amendments proposed not only by the government but by opposition parties, we see overlap, we see conflict and we see confusion between one bill and the other. We feel that in certain circumstances it would be extraordinarily difficult for a health practitioner to know where to start with Bill 74, or even for an advocate to see very clear direction from that bill.

We also feel that it is an extraordinary abuse of the power of the legislator and the minister to inflict these bills on the public, on health care practitioners and on vulnerable people, without adequate public knowledge. These amendments are coming forward without having been read into the record. There is no way that people will have any reasonable way of knowing what changes—whether they're policy changes in terms of the withdrawal of amendments, such as the parliamentary assistant has just done today. I know they had consultation with groups and individuals indicating that that was their latest policy position; now they're withdrawing that.

I really believe these bills should be reprinted, that there should be another round of submission and analysis that the committee can hear, that the minister should be involved in this process, particularly the Minister of Citizenship, and that we should not be proceeding into committee of the whole without an additional review. This process has been a mess from day one, and it's been a mess from day one because the work of the Ministry of Citizenship has been inadequate and intransigent.

**Mr Winninger:** I want to say for the record that I agree neither with Mr Sterling nor Ms Sullivan. I appreciate their concerns; I think they would have to admit, though, that the government has been obliging and responsive to criticisms expressed both by the opposition and also by outside groups.

I don't treat agreements of the House leaders lightly. It's been common knowledge for a long time that the vote today would take place and that further amendments can be discussed at committee of the whole in any event, so I don't think allegations that this government has been



sloppy or confused add anything to this. I think we have to stick with the agreement of the House leaders.

Consultation has taken place in the past, it's taking place in the present and I'm confident it will continue until this legislation reaches final implementation. I don't think consultation should hold up the show.

**The Chair:** Mr Wilson, on a point of order.

**Mr Jim Wilson:** Yes, on the same point of order as—

**The Chair:** There is no point of order on the floor at the moment.

**Mr Jim Wilson:** Then on a point of order, Mr Chairman, a couple of points: We finally had the opportunity to meet with the Minister of Citizenship this morning. She indicated to us that she'll be meeting with the Ontario Hospital Association, the College of Physicians and Surgeons of Ontario and the Ontario Medical Association tonight and tomorrow.

What in the world are we doing here in terms of your asking us to vote on these clauses and bills right now while the minister has arranged meetings with major health care practitioners? If that isn't a slap in the face to our medical community, our health care practitioners and our hospitals and institutions, I don't know what is. Here we're going to do the dirty deed right now, and she's got these meetings tonight and tomorrow. Just give your heads a shake over there. That just doesn't make any sense whatsoever. You talk about consultation.

We also left that meeting this morning, Mr Chairman, as the public should know, with a high degree of satisfaction that the minister had listened to our pleas and the pleas of the Ontario Medical Association, the CPSO and the Ontario Hospital Association—as appeared both in a letter and in the newspapers over the past weeks and the editorials of the *Toronto Star* in particular—that she had listened and was willing to take a time out, as had been requested by those groups, and as Mr Sterling said on his point of order, that we try to do the best we can to draft good legislation for the people of this province.

Secondly, let's not leave a false impression with the public or other members of Parliament that our House leaders had any choice in the order that was drafted by Dave Cooke back in May. We had a gun to our heads—a rather large bazooka, I might add. He wouldn't allow us a second round of public hearings if we didn't agree to the order as he drafted it. It was either his way or the highway, and in the interests of good public legislation and drafting of legislation, we agreed reluctantly, both the Liberal House leader and the PC House leader, to the second round of hearings, but we had no choice but to do those under Mr Cooke's rules.

Let's not leave any false impressions out there and let's not use that order for the House as a crutch. The government right now can make the decision to take a time out to draft this legislation properly and to not create false impressions and false consultations with the major stakeholders in this group, which is what you're about to do right now, given that there are meetings pending in the next 24 hours.

**The Chair:** Thank you, Mr Wilson, but as I stated, I have no further directions to postpone this, so we will continue.

Mr Malkowski, on a point of order?

**Mr Malkowski:** Yes, just for the record, I would like to respond to the concern raised.

**The Chair:** I'm sorry. We're not doing anything like that.

**Mr Sterling:** Mr Chairman, on a point of order: I would respectfully give Mr Malkowski an opportunity to respond.

**Mr Jim Wilson:** Since we met with his minister this morning.

**The Chair:** Okay.

**Mr Malkowski:** I would like to respond to the issue that there are no new amendments that have been tabled at this point and that delaying the vote serves no real purpose, that we are going to be looking at the very same package and that there is still time to deal with any new issues with committee of the whole. We have that period between this vote and committee of the whole which gives us plenty of time to deal with any issues.

**Mr Sterling:** We won't have the opportunity to listen to other people if we want to hear something back, though. That's the problem once we get to that stage.

**The Chair:** The Chair has been quite lenient in allowing everybody to express their thoughts at the moment. Before we proceed to the votes, we'll call for a 10-minute recess.

The committee recessed at 1633 and resumed at 1649.

**The Chair:** I call this committee back to order. Mr Malkowski would like to clarify what he stated earlier for the record.

**Mr Malkowski:** On a point of privilege, just clarification of an interpretation that was made: I'd actually said that no new amendments can be tabled at this point but that anyone can file new amendments at committee of the whole.

**The Chair:** Thank you, Mr Malkowski. Now we'll proceed with the outstanding votes on Bill 74.

**Mrs Sullivan:** On a point of order, Mr Chairman: Earlier Mr Malkowski withdrew an amendment which appears to be a substantial change of government policy with respect to the right of a person in a private dwelling to refuse an advocate's entry without a warrant.

It appeared that motion was being withdrawn after the government had given its commitment to put that policy into place and in fact was changing a commitment that it had made between the last committee hearing and now.

If it is the intention of the government to support an opposition amendment which would have the same effect, would the government clarify that position now? It is a very important matter for us in opposition.

**The Chair:** Is there any response? Mr Malkowski.

**Mr Malkowski:** I'll refer that to our legal counsel to respond.



**Ms Perlis:** It is the amendment to section 25.1 that the government withdrew. It is intending to support the PC motion on the same section.

**Ms Carla McKague:** That's not the issue, Linda.

**Ms Perlis:** I know. I am just saying that there is a motion withdrawn by the government which it intends to support an identical PC motion on. It is not the one to section 34; it's the one to 25.1.

**Mrs Sullivan:** The government is not going to support the opposition amendment on access to private dwellings by an advocate, section 34?

**Ms Perlis:** The government has tabled new motions to section 18 which we believe accomplish the same effect by changing and restricting the grounds for warrantless entry to private premises, rendering the former motion to section 34 unnecessary.

**Mrs Sullivan:** We disagree with that interpretation; however, we'll see what happens as the vote proceeds.

**The Chair:** On section 1, shall section 1 of the reprinted bill, as amended, carry? All in favour? Opposed? Carried.

On section 2, shall the Liberal motion to section 2 of the reprinted bill carry? All those in favour? Opposed? Defeated.

Shall section 2 of the reprinted bill carry? All in favour? Opposed? Carried.

On section 3, shall section 3 of the reprinted bill carry? All those in favour? Opposed? Carried.

**Mr Winninger:** On a point of order, Mr Chair: I wonder if enough time could be allowed for the interpreter to translate for Mr Malkowski so that he knows exactly what we're voting on.

**The Chair:** I'll try to slow it down. My apologies.

On section 4, shall the Liberal motion to section 4 carry? Agreed? Carried.

Shall section 4 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 5, shall the Liberal replacement motion to subsection 5(2) carry? All those in favour? Opposed? Defeated.

Shall the Progressive Conservative motion to subsections 5(2) to (2.2) carry? All those in favour?

**Mr Sterling:** Could I have a recorded vote?

**The Chair:** Recorded vote.

The committee divided on the Progressive Conservative motion to subsections 5(2) to (2.2), which was negatived on the following vote:

#### Ayes-2

Sterling, Wilson (Simcoe West).

#### Nays-8

Akande, Carter, Curling, Malkowski, Morrow, Sullivan, Wessenger, Winninger.

**The Chair:** Shall section 5 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 6, shall the Liberal motion to subsections 6(1), (1.1) and (1.2) carry? All those in favour? Opposed? Defeated.

Shall the Liberal motion, alternate 2, to subsection 6(1.1) carry? All those in favour? Opposed? Defeated.

Shall section 6 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 7, shall the Liberal motion to clause 7(1)(d) carry? All those in favour? Opposed? Defeated.

Shall the Liberal motion to clause 7(1)(k) carry? All those in favour? Opposed? Defeated.

Shall the government motion to clause 7(1)(k.2) carry? Agreed? Carried.

Shall the Liberal motion to clause 7(1)(k.2) carry? All those in favour? Opposed? Defeated.

Shall the Liberal motion, alternate 1, to clause 7(1)(k.2) carry? All those in favour? Opposed? Defeated.

Shall the Liberal motion, alternate 2, to clause 7(1)(k.2) carry? All those in favour? Opposed? Defeated.

Shall the government motion to subsections 7(6) and 7(7) carry? Agreed? Carried.

Shall the Liberal motion to subsection 7(6) carry?

**Mrs Sullivan:** Mr Chairman, that motion is irrelevant. I will withdraw that.

**The Chair:** Thank you. Shall section 7 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 8, shall section 8 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 8.1, shall the government motion to section 8.1 carry? All those in favour? Opposed? Carried.

On section 9, shall section 9 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 10, shall section 10 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 11, shall section 11 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 12, shall section 12 of the reprinted bill carry? Agreed? Carried.

On section 13, shall the Progressive Conservative motion to subsection 13(4.2) carry? All those in favour? Opposed? Defeated.

Shall section 13 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 14, shall section 14 of the reprinted bill carry? All those in favour? Opposed? Carried.

#### 1700

On section 15, shall section 15 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 15.0.1, shall the Liberal motion to section 15.0.1 carry? All those in favour? Opposed? Defeated.

Shall the Progressive Conservative motion to section 15.0.1 carry?

**Mr Sterling:** Mr Chairman, on a point of order: If we vote on this at this time, does this prevent me from presenting this again in committee of the whole House?

**The Chair:** It's my understanding that it would be allowed since it is a different venue.

Shall the Progressive Conservative motion to section 15.0.1 carry? All those in favour? Opposed? Defeated.

On section 15.1, shall section 15.1 of the reprinted bill, as amended, carry? Agreed?

**Mr Wessenger:** We missed one, 15.0.1.

**The Chair:** There is no section 15.0.1. Okay?

On section 15.1, shall section 15.1 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 15.2, shall section 15.2 of the reprinted bill carry? Agreed? Carried.

On section 15.3, shall section 15.3 of the bill, as amended, carry? Agreed? Carried.

On section 16, shall section 16 of the reprinted bill carry? All those in favour?

**Mrs Sullivan:** A recorded vote, please.

**Mr Sterling:** Recorded vote.

The committee divided on whether section 16 of the reprinted bill should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**Nays—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** On section 17, shall the Liberal motion to subsection 17(4) carry? All those in favour? Opposed? I might remind all committee members that they do have to vote.

**Mr Jim Wilson:** What's the sense?

**Mr Morrow:** Exercise, come on.

**Mr Winninger:** Could we have a recorded vote on that last one?

**The Chair:** Motion defeated.

**Mr Jim Wilson:** It doesn't make any sense whatsoever.

**The Chair:** Shall section 17 of the reprinted bill carry?

**Mr Sterling:** A recorded vote.

The committee divided on whether section 17 of the reprinted bill should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**Nays—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** On section 18, shall the government motion to subsection 18(1) carry? All those in favour? Opposed? Carried.

Shall section 18 of the reprinted bill, as amended, carry?

**Mr Sterling:** A recorded vote.

The committee divided on whether section 18 of the reprinted bill, as amended, should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**Nays—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** On sections 19 to 23, shall the government motion to subsection 19(1) carry? Agreed? Carried.

Shall sections 19 to 23 of the reprinted bill, as amended, carry? Agreed? All those in favour? All those opposed? Carried.

On section 24, shall the government motion to subsections 24(4.1) and (4.2) carry? Agreed? All those in favour? Opposed? Carried.

Shall the government motion to subsection 24(4.3) carry? Agreed? Carried.

Shall the Liberal motion to subsection 24(5) carry? All those in favour?

**Mrs Sullivan:** A recorded vote.

The committee divided on whether the Liberal motion to subsection 24(5) should stand as part of the bill, which was negated on the following vote:

**Ayes—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**Nays—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**The Chair:** Shall section 24 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 25, shall the government motion to subsection 25(2) carry? All those in favour?

**Mrs Sullivan:** A recorded vote, please.

The committee divided on whether the government motion to subsection 25(2) should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**Nays—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** Shall the government motion to subsection 25(2.1) carry? All those in favour?

**Mrs Sullivan:** A recorded vote, please.

The committee divided on whether the government motion to subsection 25(2.1) should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.



**Nays—3**

Curling, Sullivan, Wilson (Simcoe West).

**The Chair:** Shall the Liberal motion to subsection 25(5) carry?

**Mr Sterling:** Just a moment. I did not vote on the last one. I want an opportunity to read the amendment.

**The Chair:** My apologies.

**Mr Sterling:** I'll vote with the government on this one.

**The Chair:** You'll be supporting that motion?

**Mr Sterling:** Yes.

**The Chair:** Thank you, Mr Sterling.

Shall the Liberal motion to subsection 25(3) carry? All those in favour? Opposed? Defeated.

Shall section 25 of the reprinted bill, as amended, carry? All those in favour? Opposed?

**Mr Sterling:** I'd like a recorded vote.

**Mr Morrow:** The vote's been taken.

**The Chair:** I'm sorry, I'll try and slow down for these requests.

The committee divided on whether section 25 of the reprinted bill, as amended, should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**Nays—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** On section 25.1, shall the Progressive Conservative motion to section 25.1 carry? Agreed? Carried.

On section 26, shall the Liberal motion to subsections 26(3) and (4) carry? All those in favour?

1710

**Mrs Sullivan:** A recorded vote, please, Mr Chair.

The committee divided on Mrs Sullivan's motion to subsections 26(3) and (4), which was negated on the following vote:

**Ayes—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**Nays—6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**The Chair:** Shall section 26 of the reprinted bill carry? In favour? Opposed? Carried.

On section 27, shall the government motion to section 27, paragraph 2, carry? All those in favour? Opposed? Carried.

Shall section 27 of the reprinted bill, as amended, carry? Agreed? All those in favour? Opposed? Carried.

On section 28, shall the government motion to clause 28(1)(a) carry? All those in favour? Opposed? Carried.

Shall the government motion to clause 28(2)(a) carry? All those in favour? Opposed? Carried.

Shall section 28 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 29, shall section 29 of the reprinted bill carry? Agreed? Carried.

On section 30, shall the government motion to subsection 30(1.1) carry? Agreed? Carried.

Shall the government motion to subsection 30(1.2) carry? Agreed? Carried.

Shall the Liberal motion to clause 30(3)(c) carry? Agreed? Carried.

Shall the government motion to clause 30(3)(d) carry? Agreed? Carried.

Shall the government motion to subsection 30(5.2) carry? Agreed? Carried.

Shall the government motion to clause 30(5.2)(a) carry? Agreed? Carried.

Shall the government motion to clause 30(5.2)(b) carry? Agreed? Carried.

Shall section 30 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 30.1, shall the government motion to section 30.1 carry?

**Mr Jim Wilson:** Can we have a moment on that one, Mr Chairman?

**The Chair:** Okay.

**Mr Jim Wilson:** Okay.

**The Chair:** Agreed?

**Mr Jim Wilson:** Agreed. It's better than nothing.

**The Chair:** Carried.

On section 31, shall the Liberal motion to subsection 31(1) carry? All those in favour? Opposed? Defeated.

Shall the government motion to subsection 31(1.1) carry? Agreed? Carried.

Shall the government motion to subsection 31(1.2) carry? All those in favour? Opposed? Carried.

Shall section 31 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On sections 32 and 33, shall sections 32 and 33 of the reprinted bill carry? Agreed? Carried.

On section 34, shall the Liberal motion to clause 34(1)(a) carry? All those in favour? Opposed? Defeated.

Shall the Liberal motion to subsection 34(2.1) carry? All those in favour? Opposed? Defeated.

**Mr Sterling:** I'd like a recorded vote.

**The Chair:** Mr Sterling, could you please ask for the recorded vote before?

**Mr Sterling:** I'm trying to keep pace. Either you slow down or you give us a bit of a chance to—

**The Chair:** My apologies.

**Mr Jim Wilson:** You only have to read the road map as provided to you. We have to read the road map and the amendments as we go.

**Mr Sterling:** Quite frankly, we're trying to think for ourselves and not just follow in a trained pattern.

**The Chair:** My apologies, Mr Sterling, once again.

The committee divided on the Liberal amendment to subsection 34(2.1), which was negated on the following vote:

**Ayes—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**Nays—6**

Akande, Carter, Malkowski, Morrow, Wessinger, Winninger.

**The Chair:** Shall the government motion to subsection 34(3) carry? Agreed? Carried.

Shall section 34 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 34.1, shall the Liberal motion to subsection 34.1(2) carry?

**Mr Sterling:** I'd like a recorded vote on this.

The committee divided on the Liberal motion to subsection 34.1(2), which was negated on the following vote:

**Ayes—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**Nays—6**

Akande, Carter, Malkowski, Morrow, Wessinger, Winninger.

**The Chair:** Shall the Progressive Conservative motion to subsection 34.1(4) carry? All those in favour? Opposed? Defeated.

Shall section 34.1 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 35, shall the Liberal motion to subsection 35(1) carry? All those in favour? Opposed? Defeated.

Shall section 35 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 36, shall the Liberal motion to subsection 36(1) carry? All those in favour? Opposed? Defeated.

1720

Shall the government motion to clause 36(1)(e.1) carry? On the road map it's under section 37; there was unanimous consent to change 37 to 36 earlier. On 36(1)(e.1), agreed? Carried.

Shall the Liberal replacement motion to clauses 36(1)(g) to (l) carry? All those in favour? Opposed? Defeated.

Shall the Liberal motion to subsection 36(3) carry? All those in favour? Opposed? Defeated.

Shall section 36 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 37, do we have unanimous consent to delete this section? Agreed? Okay. Thank you.

On section 38, shall the Liberal motion to subsection 38(2) carry? All those in favour?

**Mr Sterling:** Just a minute; I want to read that one. Okay, I agree with it.

**The Chair:** Okay. Shall the Liberal motion to subsection 38(2) carry? All those in favour? Opposed? Defeated.

Shall section 38 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 39, shall section 39 of the reprinted bill carry? Agreed? Carried.

On the schedule, shall the schedule, as reprinted, carry? All those in favour? Opposed? Carried.

Shall the title of the reprinted bill carry? All those in favour? Opposed? Carried.

Shall the reprinted bill, as amended, carry? All those in favour?

**Mr Sterling:** Recorded vote.

The committee divided on whether Bill 74, as reprinted, should carry, which was agreed to on the following vote:

**Ayes—6**

Akande, Carter, Malkowski, Morrow, Wessinger, Winninger.

**Nays—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** Shall I report the bill to the House? All those in favour? Opposed? Carried.

**Mrs Sullivan:** Mr Chairman, I'd like to place a motion before the committee.

**The Chair:** We cannot have any motions before the committee today. All we're—

**Mrs Sullivan:** This is an important motion, and I'd like unanimous consent to have it put. I would like the justice committee, in its report to the House with respect to Bill 74, to make a request that Bill 74, as amended, be reprinted for circulation to the public and to interested citizens.

**Mr Alvin Curling (Scarborough North):** I think that's a good request.

**The Chair:** The bill will be automatically reprinted, as you know, Mrs Sullivan.

**Mr Sterling:** What is the normal distribution of the reprinted bill? Will it go to all the people who made submissions here?

**The Chair:** Maybe the clerk could answer that one.

**Clerk of the Committee (Ms Lisa Freedman):** My understanding of what happens when the bill is reprinted is that it's available in the journals office or the government bookstore.

**Mr Sterling:** Mrs Sullivan raises a valid point. I think, because of the changes here, that in order for us to get the proper input back from those groups, we should send at least one copy of the reprinted bill to every group that appeared in front of us, as a matter of courtesy. I don't know if we can have a motion to that effect or not.

**The Chair:** If it's the will of the committee.

**Mrs Sullivan:** It is.

**Mr Jim Wilson:** For all the bills.

**The Chair:** Agreed? Thank you.

**Mr Sterling:** That's for all bills when we're finished with them. Is that correct, Mr Chairman?



**The Chair:** It's my understanding that that is probably what Mrs Sullivan intends, and to avoid any further delays at the end of each of the other bills, I think that could be accommodated.

Now to the outstanding questions on Bill 108.

**Mr Winner:** Mr Chair, a point of order: I'm just wondering whether we could agree to shorten the time, or whether we need to vote on each individual section, as these sections perhaps aren't as contentious. No?

**The Chair:** We have to vote on each section. Shall we proceed to the outstanding questions on Bill 108?

On sections 1 to 9, shall sections 1 to 9 of the reprinted bill carry? Agreed? Carried.

On section 10, shall section 10 of the reprinted bill, as amended, carry? Agreed? Carried.

**Mr Sterling:** Just a moment. As amended? Okay, yes, agreed.

**The Chair:** Thank you, Mr Sterling.

**Mr Sterling:** It's very difficult, Mr Chairman, because we didn't go through the procedure of reprinting after we had done those amendments, as Mrs Sullivan requested. It's very difficult for everybody to follow what's going on, even those of us who are familiar with these pieces of legislation.

**The Chair:** I realize these are very difficult and trying procedures, Mr Sterling.

**Mr Jim Wilson:** A lot of trees died for not a very good cause, in terms of all the paper we have on this.

**The Chair:** Shall section 10.1 of the reprinted bill carry? Agreed? Carried.

On section 11, shall section 11 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 12 and 13, shall sections 12 and 13 of the reprinted bill carry? Agreed? Carried.

On sections 15 and 16, shall sections 15 and 16 of the reprinted bill carry? Agreed? Carried.

On section 17, shall section 17 of the reprinted bill, as amended, carry? Agreed? Carried.

1730

On sections 18 to 21, shall sections 18 to 21 of the reprinted bill carry? Agreed? Carried.

On section 22, shall the government amendment to subsection 22(3) of the reprinted bill carry? Agreed? Carried.

Shall section 22 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 23 to 33, shall sections 23 to 33 of the reprinted bill carry? Agreed? Carried.

On section 34, shall section 34 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 35 and 36, shall sections 35 and 36 of the reprinted bill carry? Agreed? Carried.

On section 39, shall section 39 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 39.1, shall section 39.1 of the reprinted bill carry? Agreed? Carried.

**Mrs Sullivan:** On a point of order, Mr Chairman: Before you go to the next motion, I just made a note here with respect to government amendment 46. I wonder if the

clerk could clarify if there has been a government amendment that has passed to section 46.

**The Chair:** There is no amendment that was carried on section 46.

**Mrs Sullivan:** Thank you.

**The Chair:** On sections 40 to 46, shall sections 40 to 46 of the reprinted bill carry? Agreed? Carried.

On sections 47 and 48, shall sections 47 and 48 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 49, shall section 49 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 50, shall the government motion to clause 50(6)(b) of the reprinted bill carry? Agreed? Carried.

Shall section 50 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 50.1 to 51.1, or 51?

**Mr Winner:** No, 50.1 and 51.

**Clerk of the Committee:** There's been a change.

**The Chair:** There's been a change? It's 50.1 to 51.1. Your paper is incorrect. There's been a change. On sections 50.1 to 51.1.

**Mr Winner:** Will we be dealing with 51 after, Mr Chair, after we deal with these?

**The Chair:** Everything that's in there.

**Mr Winner:** Okay. That's fine.

**Mrs Sullivan:** This includes 51.

**The Chair:** Shall sections 50.1 to 51.1 of the reprinted bill carry? All those in favour? Opposed? Carried.

**Mr Winner:** On a point of order, Mr Chair: What happens to section 51? Is it already deemed to be voted on?

**The Chair:** You just voted on it.

**Ms Zanana L. Akande (St Andrew-St Patrick):** You just voted on 51.1. It takes it all up to there.

**Mr Winner:** We voted on 50.1 to 50.2.

**The Chair:** No. For clarification, it's 50.1 to 51.1, inclusive.

Interjections.

**The Chair:** Order, please. We're looking for unanimous consent on the government motion on subsection 52(2). Agreed? That's consent to move. On section 52, shall the government motion to subsection 52(2) carry? Agreed? Carried.

**Mr Sterling:** Was it recorded what the motion was, because there was some change in terms of the wording.

**The Chair:** There was unanimous consent to change the words in the motion to "personal care" from "managing property."

**Mr Sterling:** Okay. I didn't know whether that had been recorded or not.

**The Chair:** That's the one we had the discussion on earlier.

Shall section 52 of the reprinted bill, as amended, carry? Agreed? Carried.

Sections 53 to 55, shall sections 53 to 55 of the reprinted bill carry? Agreed? Carried.

On sections 56 and 57, shall sections 56 and 57 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 58, shall section 58 of the reprinted bill carry? Agreed? Carried.

On section 59, shall section 59 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 60 to 62, shall sections 60 to 62 of the reprinted bill carry? Agreed? Carried.

On section 63, shall the government motion to subsection 63(7.1) of the reprinted bill carry? Agreed? Carried.

Shall section 62 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 64, shall section 64 of the reprinted bill carry? Agreed? Carried.

On sections 65 and 66, shall sections 65 and 66 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 67, shall section 67 of the reprinted bill carry? Agreed? Carried.

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On section 68, shall section 68 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 69 to 79.2, shall sections 69 to 79.2 of the reprinted bill carry? Agreed? Carried.

On sections 80 and 81, shall sections 80 and 81 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 82 to 85, shall sections 82 to 85 of the reprinted bill carry? All those in favour? Opposed? Carried.

On the schedule, shall the reprinted schedule carry? Agreed? Carried.

Shall the title carry? Agreed? Carried.

**Mr Sterling:** Could I ask a question about section 84? It is the proclamation section. Under that section, as it's written, can they proclaim all or part?

Interjection.

**Mr Sterling:** Thank you. The answer is yes.

**The Chair:** Shall the reprinted bill, as amended, carry? All those in favour?

**Mr Jim Wilson:** A recorded vote, Mr Chairman.

The committee divided on whether Bill 108, as reprinted, should carry, which was agreed to on the following vote:

#### Ayes-5

Akande, Carter, Morrow, Winninger, Wessenger.

#### Nays-4

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** Shall I report the bill to the House? Agreed? Carried.

Outstanding questions on Bill 109?

On sections 1 and 2, shall sections 1 and 2 of the reprinted bill carry? Agreed?

**Mr Jim Wilson:** One moment.

**The Chair:** Oh, my apologies. Now that the committee has all had time to catch up with myself, on sections 1 and 2, shall sections 1 and 2 of the reprinted bill carry? All those in favour? Opposed? Carried.

On section 3, shall the government motion to section 3 carry? Agreed? Carried.

Shall section 3 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 4, shall section 4 of the reprinted bill carry? Agreed? Carried.

**Mrs Sullivan:** On a point of order, Mr Chairman: Could we ask for separate votes on sections 5 and 6?

**The Chair:** Sure, no problem.

On section 5, shall section 5 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 6, shall section 6 of the reprinted bill, as amended, carry? No? All those in favour? Opposed? Carried.

On section 7, shall section 7 of the reprinted bill carry? Agreed? Carried.

On section 9, shall section 9 of the reprinted bill carry? Agreed? Carried.

On section 10—

**Mr Jim Wilson:** Recorded vote.

**The Chair:** Could I ask for the motion first? I'm sorry I'm unable to keep up with you, Mr Wilson.

**Mr Jim Wilson:** I thought, Mr Chairman, you wanted advance notice.

**The Chair:** Thank you. Shall the Progressive Conservative motion to subsection 10(1) carry?

The committee divided on the Progressive Conservative motion to subsection 10(1), which was negated on the following vote:

#### Ayes-4

Curling, Sterling, Sullivan, Wilson (Simcoe West).

#### Nays-6

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**The Chair:** Shall the Progressive Conservative motion to subsection 10(2) carry? All those in favour?

**Mr Jim Wilson:** Recorded.

The committee divided on the Progressive Conservative motion to subsection 10(2), which was negated on the following vote:

#### Ayes-4

Curling, Sterling, Sullivan, Wilson (Simcoe West).

#### Nays-6

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**The Chair:** Shall the Progressive Conservative motion to subsection 10(3) carry?

**Mr Jim Wilson:** Recorded.

The committee divided on the Progressive Conservative motion to subsection 10(3), which was negated on the following vote:

#### Ayes-4

Curling, Sterling, Sullivan, Wilson (Simcoe West).



**Nays-6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**The Chair:** Shall the Progressive Conservative motion to subsection 10(4) carry? All those in favour?

**Mr Jim Wilson:** Recorded.

The committee divided on the Progressive Conservative motion to subsection 10(4), which was negatived on the following vote:

**Ayes-4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**Nays-6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**The Chair:** Shall section 10 of the reprinted bill, as amended, carry?

**Mr Jim Wilson:** Recorded.

The committee divided on whether section 10 of the reprinted bill, as amended, should carry, which was agreed to on the following vote:

**Ayes-6**

Akande, Carter, Malkowski, Morrow, Wessenger, Winninger.

**Nays-4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** On section 11, shall section 11 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 12 to 14, shall sections 12 to 14 of the reprinted bill carry? Agreed? Carried.

On section 14.1—

**Mrs Sullivan:** On a point of order, Mr Chairman: Could you clarify if this motion is in order?

**The Chair:** We can see no reason why it wouldn't be in order, Mrs Sullivan. Perhaps an explanation?

**Mrs Sullivan:** I think it changes the scope of the bill to introduce specific procedures for which a substitute decision cannot apply which are unrelated to either the common-law areas of research or sterilization, which were included in other sections of the bill. It is not part of the scope of this bill.

**The Chair:** I can see no reason why this would be going beyond the scope of the bill, Mrs Sullivan.

**Mr Jim Wilson:** On that point of order, Mr Chairman, I would agree with Mrs Sullivan. We did not have any expert testimony for or against electric shock as aversive conditioning. It was not part of the hearings. It was briefly mentioned by a couple of groups without any content and without expert testimony.

Certainly, if your ruling holds that this should be part of the bill, it seems to me that it's setting a precedent in terms of a number of other treatments that aren't dealt with in this legislation either, and you're on the slippery slope here, Mr Chairman.

You're dealing with a medical question, and perhaps for many people a question of ethics and morality, which is outside the scope of this legislation. If you start on this specific treatment, you're going to have to call in the very people the Minister of Citizenship is meeting with about this tonight and have them before this committee again so we can have some expert testimony on these types of questions.

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**Mrs Sullivan:** I do believe your ruling is in error. I'm not challenging the Chair; I'm just making a suggestion. But if we look at 15 and 15.1, where indeed there are references to common law respecting the giving or refusing of consent for research, sterilization and transplant, those issues in fact refer to what the common law is and are quite appropriately included in this bill. What this particular amendment does is to introduce a therapy around which there is no common-law tradition and to provide a directive that therapeutic treatment cannot be used.

Whether we concur with, whether we dislike or whether we like or approve of that particular therapy, it seems to me the reason that it's out of order is that there is no common law associated with it. Including that provision in this bill could ultimately lead a government which perhaps doesn't approve of abortion, which perhaps doesn't approve of a kidney operation or some other medical procedure to simply add, in the context of this bill, in the absence of a medical evaluation and ethical conclusion from the medical profession itself as to its efficacy—there is no common-law association with this particular act. No matter how repulsive it is to us, I think it's very much the dangerous edge of the wedge.

**Mr Winninger:** I think Mr Wilson is probably incorrect when he refers to aversive electric shock as a form of treatment. It's a form of behaviour modification; it's not a form of treatment. I think the medical practitioners you allude to would agree on that.

**Mr Jim Wilson:** No, they do not. It is part of the definition of "treatment."

**Mr Sterling:** On a point of order, Mr Chair: We've gotten into a debate here about what it is or what it isn't. That's my specific objection to the government coming forward with an amendment, at a late date, on treatment or non-treatment. I would like to be excluded from this vote, Mr Chairman.

**Mr Winninger:** On a point of order.

**Mr Jim Wilson:** On a point of order.

**The Chair:** Excuse me. To be excluded, Mr Sterling, you should leave the room.

**Mr Jim Wilson:** On the same point of order, I want to make it clear, Mr Chairman, that I—

**Mr Sterling:** I don't know enough about this, Mr Chairman. We haven't heard any—

**Mr Jim Wilson:** That's exactly the point I want to make. I can't vote on this either. I don't know whether it's good or bad. We had no testimony on it whatsoever. I don't even really, totally know what it is, so I agree with you, Mr Winninger, that it's very difficult to vote on it.

**The Chair:** To avoid further debate on this, while I realize I'm not a medical expert, I do believe this is still within the scope of the bill. I know we did have a fair bit of discussion on this in committee.

Shall the government motion to section 14.1 carry? All those in favour? Opposed? Carried.

**Mrs Sullivan:** On a point of order, Mr Chair: I feel it is extremely important to be able to include in the record the concerns we have. The third party has excluded itself from participation in that vote. As I've indicated, no matter how particularly repulsive, or how concerned individuals are about a particular therapy, including that therapy as an excluded therapy from substitute decisions—

**Mr Winninger:** Is this a point of order?

**Mrs Sullivan:** If it's not a point of order, it certainly is a point of privilege, because as a privilege I believe that members of the government party could walk out of here and interpret my vote as being a vote in support of aversive conditioning through electric shock treatment, and I do not want that impression left on the record.

However, I also suggest to you that it should be known they are walking a very dangerous line. What about the minister who doesn't like the Caesarean section and who makes, through a legislated action, certain procedures unavailable to people through substitute decision-making, no matter how valid they are as a therapy?

I think this is dead wrong from a public policy point of view.

**The Chair:** Thank you, Mrs Sullivan. As you understand, the Chair has been very lenient.

**Mrs Sullivan:** I understand.

**The Chair:** We could have had a recorded vote, and I would have allowed the opposition members to state their case before they left on their reasoning for not voting.

Mr Winninger, do you have a point of order?

**Mr Winninger:** No longer.

**The Chair:** Thank you.

On section 15, shall section 15 of the reprinted bill carry? Agreed? Carried.

On section 15.1, shall section 15.1 of the reprinted bill carry? Agreed? Carried.

On section 16, shall section 16 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 18 to 19.1, shall sections 18 to 19.1 of the reprinted bill carry? Agreed? Carried.

On section 20, shall section 20 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 21, shall section 21 of the reprinted bill carry? Agreed? Carried.

On section 22, shall the Progressive Conservative motion to subsection 22(9) carry? All those in favour? Opposed? Defeated.

I'd like to let the committee members know it's now 6 of the clock. We do have substitution slips for two of the government members at 6 o'clock, so their votes will no longer be in effect until substitutes come.

Shall section 22 of the reprinted bill, as amended, carry?

**Interjection:** No.

**Interjections:** Yes.

**Mrs Sullivan:** Let's go back to 74.

**The Chair:** Agreed? Carried.

On section 23, shall section 23 of the reprinted bill carry? Agreed? Carried.

On section 23.1, shall section 23.1 of the reprinted bill, as amended, carry? Agreed? Carried.

On section 24, shall section 24 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 25 to 30, shall sections 25 to 30 of the reprinted bill carry? Agreed? Carried.

On section 31, shall section 31 of the reprinted bill, as amended, carry? Agreed? Carried.

On sections 32 to 44, shall sections 32 to 44 of the reprinted bill carry? Agreed? Carried.

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On section 45, shall the government motion to subsection 45(1.1) carry? All those in favour?

**Mr Jim Wilson:** Recorded.

The committee divided on the government motion to subsection 45(1.1), which was agreed to on the following vote:

**Ayes—5**

Abel, Carter, Malkowski, Wessinger, Winninger.

**Nays—4**

Curling, Sterling, Sullivan, Wilson (Simcoe West).

**The Chair:** Motion carried.

Shall section 45 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On section 46, shall section 46 of the reprinted bill carry? All those in favour? Opposed? Carried.

On sections 47 and 48, shall sections 47 and 48 of the reprinted bill carry? All those in favour? Opposed? Carried.

Shall the title carry? Agreed? Carried.

Shall the bill, as amended, carry? All those in favour?

**Mr Jim Wilson:** Recorded.

The committee divided on whether Bill 109, as amended, should carry, which was agreed to on the following vote:

**Ayes—6**

Able, Carter, Malkowski, Sterling, Wessinger, Winninger.

**Nays—2**

Curling, Wilson (Simcoe West).

**The Chair:** Shall I report the bill to the House? Agreed? Carried.

The outstanding questions on Bill 110: On sections 1 and 2, shall sections 1 and 2 of the reprinted bill carry? Agreed? Carried.

On section 2.1, shall section 2.1 of the reprinted bill, which consists solely of subsection 2.1(1), carry? Agreed? Carried.

On sections 3 to 11, shall sections 3 to 11 of the reprinted bill carry? Agreed? Carried.



On section 11.1, shall section 11.1 of the reprinted bill, which consists solely of subsection 11.1(1), carry?

**Mr Jim Wilson:** A moment, Mr Chairman.

**Mr Sterling:** I think there was a line we had objected to.

**The Chair:** The government motion, 11.1(2).

**Mr Jim Wilson:** Okay, proceed.

**The Chair:** Shall section 11.1 of the reprinted bill, which consists solely of subsection 11.1(1), carry? Agreed? Carried.

On sections 12 to 17, shall sections 12 to 17 of the reprinted bill carry? Agreed? Carried.

On section 18, shall the government motion to subsection 18(8.1), alternate 2—

**Mr Wessinger:** Mr Chair, I'm wondering if Mr Sterling has reconsidered giving unanimous consent to alternate 1.

**Mr Jim Wilson:** Now why would he do that?

**Mr Sterling:** I think we'll discuss that during the committee of the whole House.

**The Chair:** That will be discussed in committee of the whole House.

Shall the government motion to subsection 18(8.1), alternate 2, of the reprinted bill carry? All those in favour? Opposed? Carried.

Shall the government motion to subsection 18(10.2) of the reprinted bill carry? All those in favour? Opposed? Carried.

Shall section 18 of the reprinted bill, as amended, carry? All those in favour? Opposed? Carried.

On sections 19 to 21, shall sections 19 to 21 of the reprinted bill carry? Agreed? Carried.

On section 22: Shall the government reprint to subsection 22(5) carry? Agreed? Carried.

Shall section 22 of the reprinted bill carry? Agreed? Carried.

On sections 23 to 26, shall sections 23 to 26 of the reprint carry? Agreed? Carried.

Shall the title, as amended, carry? Agreed? Carried.

Shall the reprinted bill, as amended, carry? All those in favour?

**Mr Jim Wilson:** Recorded.

The committee divided on whether the reprinted Bill 110, as amended, should carry, which was agreed to on the following vote:

**Ayes—8**

Abel, Carter, Haeck, Malkowski, Sterling, Sullivan, Wessinger, Winninger.

**Nays—2**

Curling, Wilson (Simcoe West).

**The Chair:** Shall I report the bill to the House? Agreed? Carried.

At this time, I'd like to thank the committee for its indulgence and its speedy passage of this day's proceedings. If possible, it's my understanding there will be a subcommittee meeting tomorrow immediately following routine proceedings.

**Mr Jim Wilson:** I don't know if we have agreement with that.

**The Chair:** Okay, whatever.

**Mr Sterling:** Mr Chairman, could I just say that I understand that you'll be stepping down as Chair of this committee and I'd like to thank you for your evenhandedness during these hearings. It's been a long route, but I must say that even though we are in different political parties, you have carried out your duties as Chairman of this committee in a dignified and fair way, and we appreciate it.

**Mrs Sullivan:** Mr Chairman, I too would like to add the commendations of our caucus to you on your performance as Chair. In my experience at the House, one of the finest committee chairs always was Floyd Laughren, and I think that you have stepped into his shoes in a very large way.

**The Chair:** Thank you very much. This committee stands adjourned until the call of the Chair.

The committee adjourned at 1810.







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- \***Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- \*Carter, Jenny (Peterborough ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
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- Harnick, Charles (Willowdale PC)
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- Runciman, Robert W. (Leeds-Grenville PC)
- \*Wessenger, Paul (Simcoe Centre ND)
- \*Winninger, David (London South/-Sud ND)

#### **Substitutions / Membres remplaçants:**

- \*Abel, Donald (Wentworth North/-Nord ND) for Mr Morrow
- \*Haeck, Christel (St Catharines-Brock ND) for Ms Akande
- \*Sterling, Norman W. (Carleton PC) for Mr Runcima
- \*Sullivan, Barbara (Halton Centre L) for Mr Mahoney
- \*Wilson, Jim (Simcoe West/-Ouest PC) for Mr Harnick

\*In attendance / présents

#### **Also taking part / Autres participants et participantes:**

Fram, Steve, legal counsel, Ministry of the Attorney General  
Perlis, Linda, policy analyst, Office for Disability Issues, Ministry of Citizenship  
Sharpe, Gilbert, director, legal services branch, Ministry of Health

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Beecroft, Doug, legislative counsel





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## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 27 October 1992

### Standing committee on administration of justice

Release of government  
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## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mardi 27 octobre 1992

### Comité permanent de l'administration de la justice

Autorisation de rendre publique  
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Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 27 October 1992

The committee met at 1545 in committee room 1.

### RELEASE OF GOVERNMENT INFORMATION

Consideration of the designated matter pursuant to standing order 125 relating to the decision by the Treasurer, Deputy Treasurer, Minister of the Environment, the Deputy Minister of the Environment and the executive council of Ontario, to ask the Ontario Provincial Police to investigate matters of Ontario's public service and members of provincial Parliament regarding the release of government information to those same members of provincial Parliament.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. I'd like to start off with the subcommittee report:

"Your subcommittee met on Monday 19 October 1992 and recommends the following witnesses for the purpose of the Liberal standing order 125 designation:

"Honourable Ruth Grier, Minister of the Environment; Gary Posen, former Deputy Minister of the Environment; Richard Dicerni, Deputy Minister of the Environment; Honourable Floyd Laughren, Treasurer of Ontario; Sharon Cohen, executive director, administration, Ministry of Treasury and Economics; Honourable Allan Pilkey, Solicitor General; Donald Obonsawin, Deputy Solicitor General; Thomas O'Grady, commissioner of the OPP; R.E. Piers, deputy commissioner; Detective Inspector M.S. Coughlin; Detective Sergeant C. Strachan; Barbara Sullivan, MPP; Murray Elston, MPP; Honourable David Cooke, Chair of Management Board."

The last one that's on your list is a mistake. It shouldn't have been on there, just for the committee's information. Questions or comments on the subcommittee's report?

**Mr Robert Chiarelli (Ottawa West):** I take it that what you're looking for is the committee to approve the subcommittee report.

**The Chair:** Right.

**Mr Chiarelli:** I would like to ask a question of the clerk before we proceed with this issue. On October 19, 1992, you as Chair wrote a letter to me in which you indicated, in paragraph 5, that the office of the government House leader was again contacted and the clerk was informed that an answer from the ministers would be forthcoming. Later, the clerk was informed that the ministers would not be attending. We're talking about the original subcommittee report that was adopted, which indicated that the committee wanted as witnesses three ministers; namely, Minister of the Environment Ruth Grier, Treasurer Floyd Laughren and Solicitor General Allan Pilkey. I'd like to ask the clerk whether she can confirm to me whether there is any confirmation from these ministers that they will be witnesses.

**Clerk of the Committee (Ms Lisa Freedman):** I've handed around letters that I've received back from each of the ministers. The Solicitor General has informed us that he will not be appearing before the committee. The other two ministers have informed me that they are unavailable on specific dates. I've written them back, offering alternative dates or having them suggest any date they're available, and have yet to hear back from them on that.

**Mr Chiarelli:** In view of the fact that we have no confirmation that the ministers will be attending, regretfully we'll be moving to withdraw the substance of the subcommittee's motion, which is to have this particular matter or issue determined under standing order 125, the new number. But before I move to withdraw that motion, I'm going to make a number of remarks. I understand that it requires the unanimous consent of the committee to withdraw that particular item.

I chaired the justice committee in the last Parliament, when we dealt with an issue under standing order 123, which is now 125. At that time, I think the justice committee and the section of the standing orders worked very well. Standing order 123 was established through negotiation of the three parties in the last Parliament in order to permit committees, and therefore members of the Legislature, to better deal with issues that can't properly be dealt with in the Legislature because of time. We all know that there are significant issues that we want to debate, that we want to research, that in fact we want to report back to the Legislature on. In the last Parliament the justice committee, in a very non-partisan way, dealt with a very significant report on alternative dispute resolution.

When I submitted this particular motion to deal with the OPP investigation of two members of Parliament, it was submitted on the basis that there was a significant problem that we had to address in this Legislature, in this precinct. We know that matters occur from day to day, and sometimes they fall between the cracks when they really should be subject to further debate and further discussion. In that context, I had submitted to the subcommittee, under standing order 125, the issue of dealing with the OPP investigation in the offices of two MPPs resulting from leaks that had come from the government.

Now, I want to put it in a bit of context. We know that—if I can put my hands on it here—in September 1991, a little over a year ago, the Chair of Management Board made a statement in the Legislature in fact confirming some statements that were made in the speech from the throne concerning the need to have proper legislation for whistle-blowing types of situations.

That has gone absolutely nowhere, and perhaps it could have been dealt with earlier so that a resolution of that issue would have been available at the time the OPP visited the offices of two MPPs. Unfortunately, the whistle-

blowing initiative is still sitting on the shelf. Nothing, to my knowledge, has happened in the Legislature, in committee or anywhere with respect to that initiative.

I also want to refer to the Legislative Assembly Act, and in particular when you consider the bold-faced facts—I mean, the New Democratic Party was in opposition for a very long time. It frequently received brown envelopes from bureaucrats, from people in government of one type or another. There are two opposition parties there now.

What happened, in point of fact, is that two, I guess, confidential documents, at different times, were brown-enveloped to two MPPs in the Liberal opposition. Some persons caused an OPP investigation to take place. Those OPP investigations resulted in these two MPPs being visited in their offices, one of them right here in this building, by an OPP officer investigating this particular leak. That is absolutely, totally, completely unacceptable. In fact, the Speaker issued a ruling which dealt with those circumstances again where he indicated that before any police officer should come into the precinct and speak to anybody, it should be with the Speaker's approval.

That deals with such a small, tiny portion of the issue that it's absolutely unacceptable. That's one reason I thought it would be appropriate to deal with it in this type of forum under standing order 125, because we have situations where deputy ministers, political assistants, in fact ministers, ought to know under what circumstances it's appropriate or not appropriate to cause events to unfold whereby—I'm not saying there's culpability or there's a witchhunt, but somebody in the government caused events to unfold which resulted in OPP officers going into two MPPs' offices and interrogating them, in fact suggesting that there might be criminal activity involved.

I want to relate that activity to the Legislative Assembly Act. I'm reading from the book by Roderick Lewis, who's the Clerk Emeritus of the Legislative Assembly of Ontario, who wrote a very scholarly book on privilege in the Legislature. He indicates here: "The act also provides that the assembly has all of the rights and privileges of a court of record for the purpose of summarily inquiring into and punishing as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally to investigate the following items as a court...."

This is the Legislative Assembly itself. One of the items it lists is "obstructing, threatening or attempting to force or intimidate a member of the assembly."

I am not making a decision now, and I haven't prejudged whether or not the OPP officers going into these two MPPs' offices was in fact an intimidation—I guess that's open to question—but what I am saying is that there's a fundamental problem with this Legislature when it passes by unanimous agreement, after consultation, standing order 125, which says that you, the members in committee, can inquire into matters of concern, and when this committee determines that it's going to inquire into this issue, three government ministers say: "No, thank you. I ain't coming."

That is a slap in the face to this committee and it's a slap in the face to the parliamentary process. In fact, that

act itself is an intimidation of the members of this Legislature, when in due process, implementing standing order 125, we in this room decide we're going to look into this issue, this committee decides we will look into this issue, and the three ministers say, "I'm sorry. I'm not coming."

What it does, as far as I'm concerned, is that it imputes motive. The ministers are basically saying, "You guys are out there on a political witchhunt and we ain't coming," to say nothing about the whistle-blowing policy paper that was issued by your then Chair of Management Board, Tony Silipo, to say nothing about the issue of—

**Mr David Winninger (London South):** On a point of order, Mr Chairman: Given that Mr Chiarelli has evinced his intention to withdraw the section 125 designation, is his speech not out of order?

**The Chair:** No, it's not out of order. He said he was going to make comments on it and he hasn't actually moved to withdraw. He's just stated his intention.

**Mr Chiarelli:** It will save a lot more time in the long run.

**Mr Winninger:** I stand to be corrected.

**Mr Chiarelli:** Based on my comments, particularly the matter that is referred to under the Legislative Assembly Act, that this is a matter which can be referred to the Legislative Assembly to be dealt with as a court, in view of the fact that the three ministers involved are, as far as I'm concerned, in contempt of this committee—there hasn't been a Speaker's warrant issued, but the fact of the matter is that they've simply said they're not coming—in view of all these factors, in view of the fact that we are expected to have our MPPs come as witnesses and indicate what's happened, in view of the fact that a number of other people have indicated that they would come as witnesses, I think it would be inappropriate to continue with this particular motion, this issue under standing order 125.

I have no alternative but to move withdrawal of this item from the standing committee on administration of justice, and in particular I certainly would not vote to approve the subcommittee report.

As the mover of the original motion, I ask your concurrence in the fact that it is not my intention to continue with the motion given that we cannot deal with it in a substantive, significant matter because the people who presumably initiated or have the final responsibility for the events which are the subject of this particular issue will not be here in attendance. I therefore formally move withdrawal of the motion that we're dealing with under standing order 125 concerning the OPP investigation.

**The Chair:** Just as a reminder, we'll need unanimous consent on that. Another thing is that you'll also lose your 1991 designation. If you introduce a new one, it will have to be for 1992.

**Mr Chiarelli:** I accept that fact. I don't anticipate that the 1991 issue will be dealt with any more openly or properly by this government than this issue. Therefore, I wouldn't waste my time submitting it.

**The Chair:** Comments on Mr Chiarelli's motion? Mr Harnick?



**Mr Charles Harnick (Willowdale):** No, you've answered my question.

**Mr Winninger:** We're all disappointed, I think, that we can't proceed with this section 125 designation, given the enormous amount of preparation all the members in the government caucus have done and given the fact that there were 11 witnesses lined up, at least four of whom were senior officials in the ministries of the Environment, Treasury and Economics, and Solicitor General. I think we're all a little disappointed, but we're gracious in government and we're certainly prepared to acquiesce in the withdrawal of the designation.

**Mr Robert W. Runciman (Leeds-Grenville):** Mr Chairman, I regret the decision of the Liberal caucus in respect to this matter as well, but you've indicated that unanimous consent is required and given the nature of this sort of initiative, I don't want to kill it if the sponsors don't want it to proceed.

Reluctantly, I will go along with the withdrawal, but I want to indicate that I understand Mr Chiarelli's position and the view of his colleagues in respect to their frustration with the failure of the government ministers to indicate their willingness to appear before us. My party certainly has significant concerns about the use of the OPP in this instance and in other situations as well, and certainly we could tie that into the way this government is treating policemen and policewomen right across the province.

Hopefully, at some point, whether it has to be done in the assembly, we will be able to get answers to these questions as to why someone somewhere within the higher reaches of this government made a decision that MPPs' offices should be in effect raided and a search for individuals—in fact, the effort was not only made to acquire information. Apparently, I think the real implication here is an attempt to intimidate civil servants, despite all the protestations of government members and ministers in respect to their willingness to allow civil servants more freedom. The whistle-blowing legislation was referred to, which we have never had raised to our attention since the election.

Again, I'm very concerned about all of these issues and the way in which this government is dealing with policemen and policewomen, using police services. Hopefully, along with the official opposition, we can pursue these matters in the Legislature in the future.

**The Chair:** Thank you, Mr Runciman. Further comments? Seeing no further comments on Mr Chiarelli's motion to withdraw his designation, do we have unanimous consent? Agreed.

Any further business before the committee? Seeing no further business before this committee, this committee stands adjourned until the call of the Chair.

The committee adjourned at 1603.

## ERRATUM

No.	Page	Column	Line
J-9	J-69	2	36

**Should read:**

**Mr Winninger:** Exactly. So it's a problem, but it's not an insurmountable problem, since the large majority are signed at the office, where you're going to have legal or paralegal staff right there anyway to witness.

**Mr Milne:** Our concern is not so much in our office because, for example, in our office there are enough lawyers that you can find someone else and not place the burden on our staff, which we wouldn't do. Our concern is more the situation of the urgency of signing a power before an operation, which we rush off to hospitals to do, to attend in one's home and that sort of thing. It's the other 30%, or whatever that percentage is, that is our greatest concern.

**Mr Winninger:** I don't want to prolong it, but I can remember even as an articling student having to traipse along with the lawyer to witness the power of attorney at the hospital. That's probably not going to change.

**Mr Sterling:** Is there anything in here about the competency of witnesses?

**The Chair:** I'm certain that our witnesses are quite competent. Further questions or comments? Seeing none, Mr Milne, Ms Campbell, on behalf of the committee, I'd

like to thank you for taking the time out this afternoon to give us your presentation.

**Mr Sterling:** We're only halfway through, aren't we?

**Ms Dona Campbell:** You've heard only Mr Milne.

**The Chair:** Oh, we're only halfway through. Sorry about that.

**Ms Campbell:** Mr Milne spoke to you concerning only the property issues and he confined his comments to Bill 108. I will be addressing the personal care issues in both Bills 108 and 109.

In general, my committee was pleased with the proposals for amendment to the legislation, but we found that concerns addressed in our earlier submission to you had not been looked at and that new concerns were raised by the language of the amendments themselves.

I've provided a further written submission to you and I want just to highlight some of the difficulties we perceive with the legislation, as amended. I want to deal first with Bill 108, which is the Substitute Decisions Act. We find the criteria for triggering a finding of incapacity under this bill quite troubling.





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- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- \*Carter, Jenny (Peterborough ND)
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- \*Winninger, David (London South/-Sud ND)

\*In attendance / présents

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service



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Second session, 35th Parliament

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 17 November 1992

## Journal des débats (Hansard)

Mardi 17 novembre 1992

### Standing committee on administration of justice

Subcommittee report

### Comité permanent de l'administration de la justice

Rapport de sous-comité

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

Published by the Legislative Assembly of Ontario  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Tuesday 17 November 1992**

The committee met at 1546 in room 228.

### SUBCOMMITTEE REPORT

**The Chair (Mr Mike Cooper):** I call this meeting of the standing committee on administration of justice to order. My apologies for being tardy. We'll deal with the subcommittee's report first.

"Your subcommittee met on Thursday, 5 November 1992, and recommended the following:

"1. The next order of business for the committee will be Bill 15, An Act to amend the Human Rights Code.

"2. Letters of invitation to submit written briefs and/or request an oral appearance will be sent to relevant groups.

"3. Reimbursement of expenses incurred to travel to Toronto for groups who lack sufficient funds shall be considered.

"4. The hearings shall commence on 23 November 1992.

"5. Ads shall be placed in daily newspapers in Toronto, London, Windsor, Kingston, Ottawa, North Bay, Thunder Bay and Sault Ste Marie.

"6. A press release will be sent to all daily and weekly newspapers across Ontario."

For the committee's information the supplementary witness list has been handed out to each of you. Any questions or comments? Mr Winner.

**Mr David Winner (London South):** I would respectfully submit that perhaps we could dispense with number 5 of the subcommittee report, given that we do have a very extensive list of potential witnesses and we can't accommodate all of them anyway. Also, in light of number 6, which will provide for press releases to go out, perhaps we could avoid the costly expenditure for ads.

**The Chair:** Comments?

**Ms Anne Swarbrick (Scarborough West):** Sounds good.

**The Chair:** A motion to delete. All those in favour of the motion to delete number 5? Carried. Further comments, questions?

**Mr Alvin Curling (Scarborough North):** Number 1: Am I to understand that after this one we will be dealing with Bill 15? Is that what it's saying?

**The Chair:** That's our next order of business.

**Mr Curling:** Yes, okay. I just wondered.

**Ms Swarbrick:** I'm just noticing a tiny thing as I try and hunt through the list to see who maybe should be added. All I've noticed so far is that "Motors of Canada" I presume really means "General Motors of Canada."

**Mr Charles Harnick (Willowdale):** Good point.

**Mr Winner:** Also, Mr Chair, I had a discussion with our researcher, and perhaps we should also add on the faculty associations, which are quite distinct from the university administration.

Interjection.

**Mr Winner:** Pardon? We're abolishing the exemption from age discrimination for those people over 65.

**The Chair:** Duly noted.

**Mr Winner:** Is CUPE in on this?

**The Chair:** It's just invitations. They'll determine who they want to send or whether they want representation.

**Mr Harnick:** They're the ones who started all this.

**The Chair:** Further comments? Seeing no further comments, all those in favour of the subcommittee's report? Opposed? Carried.

Any further business before the committee? Seeing no further business before the committee, we stand adjourned until November 23.

The committee adjourned at 1549.

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)

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Wessinger, Paul (Simcoe Centre ND)

\*Winninger, David (London South/-Sud ND)

#### **Substitutions / Membres remplaçants:**

\*Swarbrick, Anne (Scarborough West/-Ouest ND) for Mr Morrow

\*In attendance / présents

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





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Second session, 35th Parliament

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Monday 23 November 1992

### Standing committee on administration of justice

Human Rights Code  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Lundi 23 novembre 1992

### Comité permanent de l'administration de la justice

Loi de 1992 modifiant  
le Code des droits de la personne



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 23 November 1992

The committee met at 1551 in room 151.

### HUMAN RIGHTS CODE AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

Consideration of Bill 15, An Act to amend the Human Rights Code / Loi modifiant le Code des droits de la personne.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. Today we'll be starting our public hearings on Bill 15, An Act to amend the Human Rights Code, presented by Mr Winninger.

Today we'll be having two witnesses. Mr Winninger will be leading off to present the bill, and then, with the committee's approval, we'll be having Mr Mills. I realize it's unorthodox to have another member presenting at the committee, but being as the notices went out late and we didn't have any other people today, there was nobody being bumped in that case.

Over 2,000 letters went out asking people if they wanted to do submissions, so the schedule you have in front of you will probably be filling in as people respond back to that.

At this time I'd like to welcome Mr Winninger, the MPP for London South. If you will, please proceed.

**Mr David Winninger (London South):** Thank you, Mr Chair. It's indeed a pleasure to be on the other side of the committee table today and to introduce for consideration by the members of this committee a matter which is of great concern to every resident of Ontario, to every person who wishes to decide the circumstances of his or her retirement and the manner and the time at which that retirement may take place.

This is a matter of concern to every person, as well, who is affected by employment and retirement policies through the taxes they pay, the personal support they may be called on to offer to persons who can no longer work or through the social costs which are incurred when persons with skills and knowledge are arbitrarily and as a matter of policy rather than practicality forced out of the labour market.

The proposal arises out of a private member's bill introduced by me on April 27 of this year. My bill amends the definition of age in the Human Rights Code. This amendment was referred to the justice committee after receiving second reading in the House and will prohibit discrimination based on age against persons aged 65 and over.

There are presently no bars to employers, in particular, practising such discrimination. They presently have a carte blanche, subject to certain controls under section 24 of the Human Rights Code, to discriminate against older persons for no other reason than that they have reached a certain

age. For reasons that I am about to outline, this seems manifestly unfair.

My proposal would bring Ontario into line with a number of other jurisdictions which have amended their human rights codes to prohibit discrimination based solely on age against persons aged 18 and over. These jurisdictions include the provinces of Alberta, Quebec, Manitoba, New Brunswick and Prince Edward Island, as well as the Yukon and Northwest Territories.

I would like to point out some of the reasons that these different jurisdictions were persuaded to incorporate similar non-discriminatory clauses into their human rights codes.

First, I would like to mention the very significant benefits which a non-discriminatory requirement could bring to women, to recent immigrants and to all persons whose main long-term employment has been in casual or low-paying labour. Such persons often find, at attaining the age of 65, that they lack sufficient pensions to support their retirement. Where persons in this position are subject to dismissal from their place of employment, either at the whim of their employer or as a result of a mandatory retirement policy, they are essentially forced into a life of poverty.

That citizens should be denied the right to work and, as a consequence, be forced into poverty strikes me, at least, as not just unjustifiable in a free and democratic society but as truly outrageous. It seems to me a great transgression against the senior members of a society that after spending a lifetime in productive service to their communities, they should suddenly, at an arbitrarily chosen age of 65, be deprived of their fundamental rights. It seems to me unconscionable that at a time in life when an older person is sorely in need of resources, often as a consequence of having made social contributions which require considerable self-sacrifice, she or he should then be deprived overnight of the means of acquiring those resources.

My concerns, as some recent cases illustrate, are based on a realistic understanding of actual problems people face when they turn 65. Just to illustrate, I want to describe briefly the predicament of a woman, Ms Windus, who is presently being represented by the Women's Legal Education and Action Fund and whose case is being considered by the Human Rights Commission. I want to describe her predicament in particular because she has a work history which is typical of many women.

To paraphrase the words of the Ianni commission, the Ontario Task Force on Mandatory Retirement, she is typical because of her relatively low lifetime income and relatively small pension payment. Ms Windus is challenging clause 9(a) of the Human Rights Code, which permits her employer to force her to retire. Her situation is a vivid example, I would submit, of the realities facing many older women.

When she became pregnant with her first child, she was forced to retire as a result of her employer's policy governing pregnant women. After retiring, she stayed home for some years to care for her family and consequently did not earn any pension credits. Later in life, she worked in the family business with her husband, without a salary, and so again did not contribute to a public or private pension plan. At the age of 48, she re-entered the workforce as a relatively low-paid accounts payable clerk. At the age of 65, in perfectly good health and eager to work, she was forced to retire on an inadequate pension income.

The situation Ms Windus faces explains why, as Susannah Rowley noted in an article entitled *Women, Pensions and Equity*: "Poverty and old age is largely a woman's problem." The present threat to the funding of social services, including the day care which is so crucial to women's fuller participation in the workplace, accounts for Rowley's observation that "it is becoming more so every year."

Canadian law now recognizes that a policy or rule that is neutral on the surface may in fact be discriminatory because of its adverse effect on particular groups. I think nothing is clearer than that the present definition of age in the Human Rights Code has an adverse, discriminatory effect on women. However, mandatory retirement by no means affects only women. I think it is also important to mention the plight of recent immigrants when considering the discriminatory effects of mandatory retirement.

Immigrants to Canada are not entitled to receive old age security until they have worked in the country for a minimum of 10 years. I ask you to consider the case of a refugee who has fled to Canada as a result of persecution in his or her own country, perhaps as a consequence of his or her own union activities or of the exercise of the right to free speech.

1600

Suppose this person arrives in Canada at the age of 58 and it then takes her two years to establish the legitimacy of her refugee status and to obtain a work permit. Suppose she then obtains a union job from which she is forced to retire at the age of 65. Her situation under these circumstances would be intolerable. She would, at the very least, be forced to live on social assistance and to endure all the humiliating restrictions that that entails.

Mandatory retirement by no means affects persons in solely economic terms. The devastating psychological effects of mandatory retirement on persons who are still in good health and eager to use their skills and continue to make a contribution to society must be considered as well. These effects have been described as follows:

"The loss of roles excludes the aged from significant social participation and devalues them. It deprives them of vital functions that underlie their sense of worth, their self-conceptions and self-esteem. In a word, they are depreciated and become marginal, alienated from the larger society. They are then to be tolerated, patronized, ignored, rejected or viewed as a liability. They are first excluded from the mainstream...and because of this non-participation are then penalized and denied the rewards that earlier came to them routinely.

"Formerly useful skills are consigned to the scrapheap overnight...condemning the elderly to 'an idleness that hastens their decline.'"

Far from embarking upon a new leisure life in their golden years, "people who are forced to retire, except for a fortunate few, are thrust into an agonizing path of doubt, insecurity, emptiness and futility."

In keeping in mind the social and psychological effects of mandatory retirement on aging persons, we must not forget either that the health and wellbeing of Canadians is constantly improving. Our lifespan is increasing and many people are maintaining their vigour to a later age. Whereas 65 might have once been a reasonable time for normal retirement, it does not seem so reasonable any more and promises to become increasingly less so. There is an increasing number of people whose general health, mental acuity and vigour make it an unreasonable and abnormal retirement time.

Some concerns have been raised about the economic and social pressures of effectively eliminating the right of employers to impose mandatory retirement. I think it is important that we address these concerns now. They certainly raise some important issues that we need to deal with. They also force us to understand some of the subtleties of the problems raised by mandatory retirement.

Perhaps the major fears concern the effect prohibiting mandatory retirement will have on the labour market—on the cost of labour, on the creation of new jobs and on the induction of new workers into the labour market in such a way as to promote employment equity goals.

It is feared that the prohibition of mandatory retirement will increase the cost of labour to employers and these costs will be passed down in the way of lower wages to other employees. Older workers, it is argued, get paid relatively more in relation to their productivity than younger workers. It is always therefore a saving to the employer to terminate an older, highly paid worker and to hire a younger worker who will do the same job for half the price.

I want to say two things in response to this concern. The first is that there is to date no evidence in all the other jurisdictions that have abolished mandatory retirement that significant numbers of highly paid workers or even that significant numbers of workers who are entitled to pensions want to stay on after the normal retirement time. Studies have been done in New Brunswick, for example, and also in the United States that show that only 1% to 2% of workers stay on past the normal retirement time and the vast majority of those who do stay on, the 1% or 2%, retire by the time they reach the age of 67.

In addition, there is, according to reports of the Ianni commission, the Ontario Task Force on Mandatory Retirement, considerable flexibility in allowing retirees to work past the usual retirement age. In fact only about 11% of employees subject to mandatory retirement agreements have no possibility of being rehired.

The public may well ask then why we should bother to eliminate mandatory retirement if in fact it won't make much difference to most workers and if in fact workers who wish to do so often continue to work past the mandatory retirement age in any case.



My answer is this: The amendment I am proposing is not aimed so much at establishing the rule as it is at accommodating the exception. What I'm proposing is aimed at protecting human rights, at protecting those persons whose retirement has not been provided for or those persons who would suffer the psychological effects of employment deprivation and consequent marginalization.

This is a human rights issue which we should address precisely because addressing it promises to have very few economic and social costs. The evidence shows that in this case the protection of human rights and the elimination of what is clearly a form of adverse effect sexual discrimination can only have benefits.

Persons who need to continue working will be able to do so without fear of being subjected to arbitrary or discriminatory dismissal. They will therefore not be forced to fall back on the public or private purse. They will therefore continue to be able to contribute to the public good.

The concern that the elimination of mandatory retirement will constitute an obstacle to younger workers entering the job market and that it will constitute a setback to employment equity goals can be responded to in the same way.

There is considerable evidence at this point that the elimination of mandatory retirement will not affect normal retirement patterns in a significant way. Therefore the social and the economic costs of protecting the rights of individuals whose circumstances may not fit the usual pattern will be minimal or non-existent. There is to my mind no justification for failing to protect those very important rights. The elimination of mandatory retirement is not, however, merely a human rights issue. It is not just an anti-poverty issue either. It will have social consequences of another dimension.

Although it may be difficult for some to envisage in this time of unemployment and economic restraint, a serious labour shortage is still being predicted in the next decade. Although the aging population will be comprised of persons whose energy, skills and knowledge could be of considerable social use, it will also include persons who will, for reasons of health or of inclination, voluntarily leave the workforce. These people will, however, continue to rely on social services and indeed will probably make more intensive use of services like health services.

1610

It is predicted that it is this demographic shift in the workforce that will result in a shortage of workers in many areas. Assuming this prediction is correct, we would do well to prepare for it by ensuring ahead of time that unreasonable bureaucratic obstacles to keeping skilled and knowledgeable workers in the workforce are removed. We should not wait until the actual shortages occur to start to introduce legislation. If we do that, our remedy will come too late, for legislation takes time and in the meantime individuals suffer and society suffers. Rather we should anticipate the future and act, I would submit, in a timely fashion.

Another concern raised by the labour movement is that the elimination of mandatory retirement will require employers to find an unpleasant solution to what we often call the

"dead wood" problem. Presently, it is argued, unproductive employees are often tolerated longer than they might otherwise be because the employer has the assurance that there is a clear limit to this degree of toleration. With the elimination of mandatory retirement, it is argued, employers will have no choice but to force unproductive and overpaid employees to leave, and this will involve increased monitoring and escalated review procedures.

These procedures, it is thought, will undermine the dignity of older workers. Undermining the dignity of older workers is certainly a serious concern, but infringing on the fundamental rights of older workers is a serious concern as well and, in my view, it is just as serious an affront to human dignity to do that.

I therefore find myself in strong agreement with the Supreme Court, which has noted quite rightly that the desire to preserve the dignity of others is not a sufficient reason to infringe on a fundamental right. My personal view is that to suppose otherwise amounts to naked paternalism, which, I have said before and will repeat here, is not justified in a free and democratic society.

In this context, I wish to mention a similar and, in my view, less serious concern. It is that the actuarial costs, the administrative costs, the costs of bookkeeping essentially, will be sufficiently high as to constitute an obstacle to this kind of change in this time of economic restraint.

The argument basically is this: A fundamental human right cannot be protected if the bookkeeping costs are too high. On this point, I can only appeal to what the Supreme Court said about dignity and I can only iterate my certainty that it would say the same thing about bookkeeping costs. It would say, I'm sure, that the normal costs of bookkeeping would not be a sufficient reason to infringe on a fundamental human right.

The cost of bookkeeping is not then, in my view, an especially good reason for denying productive and capable citizens their fundamental human rights. However, there is a concern which I take more seriously and which touches on something to which I am deeply committed. Although the appropriate response to this concern is very similar to the responses I have already given, I want to deal with it separately and to be very clear on what is really at issue with this concern.

The concern is that the elimination of mandatory retirement will have a tendency to undermine the federal government's commitment to universal social programs. The fear then is that the move on the part of the provinces to eliminate mandatory retirement actually plays into the federal government's hand with respect to the undermining of universal social programs.

When the federal government sees that older persons are not forced to retire at a certain age, it will have a stronger argument for not ensuring social security to people of that age, whether 65 or otherwise. The argument will be that if older people can work there is less reason to provide for their security. The effect of this will be to deny people who would like to retire and who, after years of being productive members of society, should be entitled to retire with the economic wherewithal to do so.



As I say, this is a very serious concern, and it is a very serious concern of mine. I am as committed as anyone could be to maintaining the universality of our social programs. I feel very strongly that equal entitlement to health and to economic security for all persons must be maintained, regardless of the contingencies of their personal fortunes, and precisely because their personal fortunes are full of contingencies. But I feel equally strongly that the infringement on fundamental human rights must not be a condition precedent to maintaining this commitment. I think that our commitment to universal social programs must be and can be maintained on independent grounds and on grounds that ensure, rather than infringe on, fundamental human rights.

Finally, there is one other concern I wish to address, and this is the opposition to eliminating mandatory retirement that is presented by some universities and that is opposed, I should add, by some faculty associations.

The universities argue—the universities of which I speak—that if mandatory retirement is eliminated, they will become moribund. They complain that they end up with a lot of dead wood which, because of the protection offered by tenure, they can only be rid of through mandatory retirement. Without mandatory retirement, they maintain, this dead wood will stay on, earning a salary that is out of proportion to its productivity and blocking the entry of younger, fresher, more enthusiastic faculty people. Since these faculty members would continue to enjoy tenure, it would be extremely difficult if not impossible to retire or dislodge these older faculty members.

In response to this concern, I want to say that I think the quite legitimate concerns of the universities can be worked out in a reasonable and practical way that will not infringe on fundamental rights. For one thing, universities have already been very successful in offering early retirement.

In conclusion, I would have to argue that this legislation will produce a win-win situation. Far from incurring costs, it will in most cases reduce the social and economic costs that are in fact incurred when skilled and knowledgeable workers are forced out of the workplace without adequate funds for their support. Not only do such persons become dependent on society in general for their support, but society suffers from the loss of the contribution they would otherwise make and also from whatever decline in mental and physical health they might suffer as a consequence of the unhappiness caused by their situations.

Given that the benefits of this legislation will far outweigh its costs, and given what is at issue, a fundamental human right, the argument for enacting this proposed legislation is very strong indeed.

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**The Chair:** Thank you, Mr. Winninger. Questions or comments?

**Ms Jenny Carter (Peterborough):** I just wondered if you have any figures about average age of retirement and how that is reflected in the different occupations. For example, I have an impression that people in blue collar

jobs tend to retire much younger than one would expect, for various reasons.

**Mr Winninger:** I don't have those specific figures, other than my indication earlier that upwards of 98% or 99% are retired by age 65 in those jurisdictions that have removed mandatory retirement. I'm reasonably confident that those kinds of figures could be broken down and could be obtained for this committee.

**Ms Carter:** And that would give a clearer picture as to why we would not expect that many people to stay on after 65. It shows a pattern of people actually retiring earlier rather than later.

**Mr Winninger:** Your suspicion may be true. It may be that in the so-called blue collar jobs where physical endurance is required, those workers may indeed want to retire earlier or may be obliged to retire earlier because they can't meet the physical requirements.

I should note parenthetically that there have been cases before the courts involving police and firefighters where reasonable age restrictions tied directly to the ability to perform the functions of that job have been upheld—ages as early as 60. The Human Rights Code has a section, section 24, which allows reasonable restrictions on retirement.

**Ms Carter:** So that firefighters, for example, already have to retire at a point when they can't meet the requirements of the job; that's what you're saying.

**Mr Winninger:** That's correct.

**Ms Anne Swarbrick (Scarborough West):** David, I think you've presented a really good brief and certainly a good argument. I do have a few questions I'd like to ask you if you have some answers.

**Mr Winninger:** Certainly.

**Ms Swarbrick:** The first, and forgive me if I've missed this but I didn't think I noticed it, is have you looked at what the impact would be on pension plans if there was no normal retirement age for the pension plans to project and to work on the basis of?

**Mr Winninger:** We have done some preliminary research in that area. You may know, for example, that the Canada pension plan already has built into it the option of deferring Canada pension credits past the age of 65 so that there would be a phasing in of pension benefits for those people who wish to continue working, and by age 70, I believe, the pension becomes payable 100%. But before that time, the pension credits are phased in. That's to accommodate, I think, those provinces that have already abolished mandatory retirement.

We could also, I suppose, look to the US experience where mandatory retirement has been abolished for a few years and see how their pension plans have been adjusted to accommodate the longer term for those workers who elect to stay on after age 65.

**Ms Swarbrick:** When you talk about comparing to the other provinces and the US, I'm wondering whether you know what the situation is in Sweden and in Europe. I guess one of the reasons my mind turns over there as well is it seems to me that it's possible that by extending the



human right of continuing to work in these situations past 65, we are effectively extending the right to work until you drop exclusively to women and immigrants.

I guess that concerns me a bit, whether the real issue is extending the right to work till you drop to women and immigrants or finding how we build in greater economic and income security to those people in view of the kinds of situations you very appropriately pointed out to us. I wonder if you could comment on the issue I've raised and if you know how Sweden and other European countries deal with it.

**Mr Winninger:** Quite frankly, it's been a while since I looked at how other countries deal with it, but it's quite clear that women and new Canadians tend to have shorter work histories before they attain the age of 65. So I tended to focus on them as perhaps the most clear-cut examples of how you can suffer economic deprivation.

There are people, though, who may, for whatever reason, not wish to retire at age 65. That may be the key to their longevity or their feeling of fulfilment in life. Regardless of whether they have that economic safety net there, they are in some cases deprived of the right to continue making their contribution to society and lose their sense of self-worth in many cases. It may in fact hasten a deterioration of their physical and psychological health.

I'm sure that we can access information on European jurisdictions as well.

**The Chair:** Thank you, Ms Swarbrick. Ms Akande.

**Ms Swarbrick:** Sorry. Actually I've a couple more as well, but I'll wait.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Go ahead.

**Ms Swarbrick:** One of the other areas that concerns me a bit is the issue of the competency arguments that that will end up invoking in many more situations, which you've referred to, if there isn't the normal retirement age for people to leave and as we in our older age become slower and what have you, of management invoking the question of competency of people at an age when wouldn't it be nice for them to be able to step down gracefully rather than having to go through such horrendous allegations against them at a point when they should be able to celebrate.

I'm wondering whether those competency arguments, given that they would be based on subjective judgements, would also invite issues of favouritism and might also in fact invite issues of sexism and racism in terms of who gets looked at to have his competency questioned at 65. Have you thought about that aspect?

**Mr Winninger:** I certainly take your point. I would contend that whether you're dealing with physical limitations or intellectual or mental limitations, at a certain age there may have to be a periodic review of competency to carry out the essential components of your job description. That's true of a security guard and I think that's also true of a university professor. There may come a point at which there would have to be periodic reviews, because otherwise you would be unable to ensure that the jobs are effectively carried out.

I guess in the case of a university professor the students and the academic community would suffer as a result if a university professor became non compos mentis or was unable to continue making an effective contribution. The same would be true of physical labourers, line workers and so on if they were a safety hazard, if they were unable to produce a reasonable quota, whatever the job descriptions are. It would be important that there be a form of review, and that in fact could be contractual or the subject of a collective agreement.

It's this arbitrariness of age 65 and terminating employment at that point that my Human Rights Code amendment is designed to address.

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**Ms Swarbrick:** You're touching now on the issue of the universities, which is one I wanted to get back to in terms of something you've touched on in your presentation. You've referred here to a university's financial concerns around being able to have senior, older professors retire after the age of 65, given of course that senior professors are the ones who are pulling in the greater income. As they leave, they would free up more of the payroll income that universities can be planning to make some economic savings on, especially in a time like the one we're going through now.

You answer that by suggesting they could in fact offer financial settlements that would be lucrative enough for the professors to want to retire, given then that those positions would still need to be replaced by the younger professors. I'm wondering how that really does solve the economic problems the university is pointing to; whether in fact we are ending up talking about costing more money instead of less.

**Mr Winninger:** There are cases now, as you've alluded to, where tenured faculty reach an agreement with the college or university to teach part-time, perhaps to supervise graduate students part-time or whatever, at a reduced salary. That option would still be available if we were to eliminate the age 65 ground for termination. Whether it would wind up costing more or not would, I suppose, be based on the degree of interest in remaining as a full professor or an associate professor with the commensurate salary.

There may be some added to universities but, given the statistical information on the number of those who elect to stay on past age 65 where mandatory retirement has been eliminated, that may be negligible. I understand the Council of Ontario Universities is presenting tomorrow and we may hear more from them in regard to their economic concerns.

I think you would agree, we are dealing here with human rights and the question is: What price do we put on human rights when we're dealing with the economics? I suggest that the extent of interest in working past 65 is rather limited and not significant in economic terms.

**The Chair:** Thank you. Ms Akande, a brief question?

**Ms Akande:** Yes, I was concerned about a couple of things you said, or it makes me want to ask some questions.



You didn't refer to the fact that there is an opportunity even now for people to extend the time of their employment. That being the case, why would you feel it would be important, in view of some of the other things I'm going to point out, to have this in legislation?

**Mr Winninger:** Because there are many who do not have the privilege of extending their employment and they are effectively discriminated against and are not accorded protection under the Human Rights Code.

While members of the Legislature, for example, can remain in office as long as the electorate allows them to do so, others are not so fortunate and may, just because they reach the magic age of 65, be forced right out of their jobs when they continue to be healthy, productive and well regarded in their particular workforce.

**Ms Akande:** In terms of the youth unemployment we're facing today, I know you make the statement that we will in fact in the future be facing a labour shortage. At the same time, it is not just a matter of a job for a job, but it's a matter of the opportunity for those youths to move through the ranks and to assume positions of responsibility and administrative heads.

Those are positions that, if we can generalize, would more likely to be held currently and maintained if retirement was to be extended by an older group, probably men. Do you not think this would dislodge or make it impossible, even more difficult, for youth to achieve those levels and therefore to support the system?

**Mr Winninger:** It's an interesting question. I keep returning to the point that only a very minuscule percentage of people elect to stay on. Whether those people will be men or women in senior management positions remains to be seen. Conversely, one might argue that those who are comfortable and have achieved a level of savings and security that others may lack would be more likely to welcome a retirement where they can live a life with greater leisure.

It's difficult to predict, but I would argue that the small numbers would not have an appreciable effect on entry to the labour force and mobility within the labour force, and I'm supported to a considerable degree by a paper I circulated at the time of second reading by Professor Krashinsky at the University of Toronto, who did a study of the economics and determined that there was no economic disincentive to eliminating mandatory retirement and that suitable arrangements can be made contractually where necessary.

**Ms Akande:** Let me ask you this. Have you considered in that collection of information the fact that in places where early retirement has been made more attractive—not just possible, but more attractive financially in terms of, let's say, education, when they were having a great many problems in terms of the numbers of teachers who were out there—the accessibility of that opportunity made a great increase in the numbers of those who in fact did retire? Do you not think that the numbers of those who would elect to remain after 65 would increase considerably once the legislation was passed? You're using as reference the small percentage who elect to remain now, but if this legislation were to pass, I would imagine that there would

be a significant increase in that percentage of those who elect to remain after 65.

**Mr Winninger:** The date I provided you with is from jurisdictions that have already abolished mandatory retirement. I was looking to those jurisdictions for their experience in terms of what numbers of people chose to stay on or not. These days, with mandatory retirement, it's a little more difficult to get a handle on who would stay on if there were protection for people over 65. We just look to the other jurisdictions for precedent on that.

**Mr Cameron Jackson (Burlington South):** A brief statement and then I wanted to build on Ms Akande's question because I thought it was a rather good one.

First of all, I want to commend Mr Winninger for being able to succeed in getting his private member's bill from the House to a committee. That's a rare episode in this environment and from this government, and it's a controversial issue and I'd rather just simply leave it at that. You're indeed fortunate that your House leader has deemed you one of the fortunate ones, that you're allowed to go ahead with yours. I wish we had a situation where there was a little more equity in that. Should your career in this building also be at a time when you're in opposition, you'll come to appreciate the importance of making sure that there's more balance. But what is before us is your bill and I wish to commend you for it and I have a few questions.

Building on Ms Akande's question, have you received any feedback from the teachers' federation in this regard or trustees' associations with any impact that this might have? I have my own theories about what may happen as a result, but have you had any feedback in support or commentary at all?

**Mr Winninger:** I don't personally, but I know that our clerk has sent out invitations to appear to 2,000 possible presenters, and I imagine that if they do have concerns they would let us know.

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**Mr Jackson:** I might encourage you to talk to your own local in this regard. In my 16 years in public education, almost all of it in an elected capacity, retirement is an economic issue. Certainly Ontario teachers' federations have negotiated very well in order to prepare a package, and the retirement gratuity in and of itself enables the teacher, in his or her first year of retirement, to earn more than in the last year of employment. That's possible. There are some fairly attractive attributes and I don't think global experiences would overlay well with the experience here in Ontario. I think we'd have to literally buy out teachers if we wanted them to retire earlier. That seems to be the trend, and there's nothing terribly wrong about that.

I do want to move into the other area, though, about building on your thesis that more older workers would be now in the total overall work pool. That would be a potential, and you use as your major reason the fact that there would be extensive discrimination.

Are you of the view that discrimination in terms of employment opportunities would continue, or that this in fact would have a positive impact on older workers who are laid off, who've lost employment—this is separate



from being told to retire—that in fact we might not create an even larger cohort of citizens who believe that they're being discriminated against because they're an older worker, if I can use that phrase, which I'm not comfortable with, frankly, but you know what I mean by that?

**Mr Winninger:** If I understand you correctly, are you suggesting that there may be older unemployed workers who have reached the age of 65 who may be seeking new employment and would, as the legislation stands right now, be effectively barred from employment unless the employer voluntarily decided to employ them, notwithstanding their age, but they wouldn't have any protection under the Human Rights Code if they were discriminated against on the basis of age in hiring policy?

**Mr Jackson:** That's correct. Is that your belief and understanding as well? You raised the issue of discrimination, and now we're now putting more of these personnes âgées, which I prefer to "older persons," into our labour pool eligible for employment in the eyes of the law. Will this not increase the amount of discrimination, because there are increasing numbers of people out there looking for work, presenting themselves to employers for employment?

**Mr Winninger:** This is difficult to predict. There obviously will be some individuals over 65 who will be seeking new jobs. Just how substantial a number that is I can't really say, but as a basic human rights issue, can we honestly say that if people don't have adequate pension plans or security they should be arbitrarily and categorically barred from seeking re-entry into the workforce merely because they've reached the age of 65?

**Mr Jackson:** The second issue which would have an impact, or, to reverse it, the second initiative of your government that may change as a result of your bill, might be its impact on employment equity. I'd like to discuss that, if I might, just for a few moments, because as I understand the current employment equity legislation of your government, it will suspend certain rights in the Human Rights Code in order to apply greater rights to those identified target groups.

My question at the outset is: Given that, by your own admission, seniors are discriminated against, and given that older worker programs are not working well, that the volunteer approach to employment for these people is not working, do you not feel, or would you support, that employment equity legislation be modified to include persons of a certain age so that they in fact are not discriminated against in the sense that you have presented it to this committee?

**Mr Winninger:** Quite frankly, I think that goes beyond the scope of my bill.

**Mr Jackson:** In what way?

**Mr Winninger:** As you well know, Mr Jackson, there are four groups that are targeted for employment equity objectives. Two of those groups, incidentally, may be, by example, older workers who are being discriminated against, women and visible minorities, many of whom may be new Canadians who haven't built up the measure of comfort and security that others may take for granted in their old age. These groups actually will dovetail quite

nicely with the proposal I put forward under the Human Rights Code.

If I understand you, though, what you may be saying is, should we extend the four groups, and I didn't mention aboriginal and disabled. And again, disabled people may be over the age of 65. They, too, may benefit from employment equity. But those who wouldn't be covered presently under the employment equity legislation who may be over 65, you're saying, shouldn't we add age as a ground for promoting employment equity?

**Mr Jackson:** My concern here, to put the fine point on it, is that you've identified discrimination as a concern, the genesis of why you're bringing forward this bill. You're about to support another bill which in fact will put elderly persons in this province—their civil rights, their rights under the Human Rights Code are going to be seized and set aside, which I guess is the proper legal phrase, by your government's bill. I'm trying to determine the degree of your commitment to facing that form of discrimination against seniors, if it is as simple as putting something into the Human Rights Code in the next several months, only to have it removed again and have more people included in that, having their rights removed under the protection of the Human Rights Code.

I'm trying to measure your degree of understanding and commitment to the concept of discrimination on the basis of age. I believe age discrimination, just as I'm sure the government believes with sexual orientation, should be added to this bill, meaning the bill on employment equity, in order that those identified target groups are dealt with in a meaningful fashion.

That's why I'm really trying to get at the nub of it, because we'd be foolish to mislead people into believing that you can monitor jurisdictions elsewhere when they don't have the kind of employment equity legislation your government's about to perform and that the unique wrinkle that will be Ontario is that in Ontario we will be taking older people and removing their rights and protections under the Human Rights Code. Before I'm prepared to do that, whether it's 80, 90 or 100, I want to get a clearer sense of the nature of your commitment to these people on the issue of discrimination, because these are considerations we have to look at.

**Mr Winninger:** I think I understand your thinking much more clearly now. I understand it clearly enough to know that I disagree with your premise. Employment equity doesn't take anyone's rights away. It speaks to hiring and promotion procedures and in some cases training procedures. It simply says, as I understand it, that if you have two people with equal abilities to perform the job, contrary to the past where disabled, aboriginals, women and visible minorities were discriminated against, we're going to make it our effective target, our objective, to hire these people so that ultimately, as you know, Mr Jackson, the workforce will accurately affect the makeup and composition of society.

I don't see that as, in any way, taking away anyone's rights under 65 or over 65, so I'm not convinced that



that's a limitation that should be addressed under employment equity.

**Mr Jackson:** Mr Winninger, not to be argumentative, you are a lawyer. You understand the law, and I suspect—

**Mr Winninger:** I've already got one strike against me now. Go ahead.

**Mr Jackson:** I didn't call you a politician. That would be very unfair.

**The Chair:** One more brief question, Mr Jackson.

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**Mr Jackson:** Thank you.

What I'm suggesting to you is simply that having read your government's employment equity legislation, can you not clearly see that the rights under the Human Rights Code for elderly people, for older white males, for older males in this province, for older Caucasians, even for older women who are not in the other target groups—that in fact your legislation clearly states that their protection under the Human Rights Code has to be set aside, that they lose those rights?

All I'm trying to put in perspective here is that on the one hand we're giving additional rights to our citizens. We're trying to convince them that we're doing something in a positive way. This isn't so you can stay in your job, only that you can stay in your job till you're older than 65.

It also means that when you're 72 and you present yourself on the doorstep of an employer, the law says you have the right to go in there and apply and you cannot be discriminated against because you're 72 years of age. That's exactly what this says. You're a lawyer and you know it.

But we're going to bring forward legislation which says, "By the way, these rights are going to be removed." You will not put force and effect in your commitment to these issues of discrimination by also having a companion action of yours to amend your own government's legislation to ensure that elder workers from 65 to 80 are not discriminated against in this province and are therefore deserving of being the government's targeted group.

By your own admission, sir, they're being discriminated against. I simply give you an opportunity to show the consistency of your commitment to these people.

**Mr Winninger:** Just in brief response, any reasonable, sensible and knowledgeable person, lawyer or layperson, would immediately see, upon reviewing the employment equity proposal, that it does not refer to age. In no way does it refer to age. It is not age legislation. Indirectly, I suppose it refers to colour, it refers to disability, whether you're an aboriginal or your gender, but it does not refer to age. So I don't see any inconsistency between the amendment I'm putting forward and the employment equity legislation.

**The Chair:** Thank you, Mr Jackson. On behalf of the committee, Mr Winninger, I'd like to thank you for coming here and giving us your presentation.

**Mr Winninger:** Thank you. I thought the questions most insightful.

**The Chair:** I'd like to call forward our next witness, Mr Gord Mills, the MPP for Durham East.

**Mr Gordon Mills (Durham East):** Thank you, Mr Chairman and members of the committee. It's indeed a pleasure for me to be here this afternoon to talk to something that's very close to my heart. I have no notes. I've no brief. I'm just going to tell you the experiences I have had and my family has had through discriminatory retirement. I'm not going to get into, nor am I about to engage in debate about professors and their lots in life or what happens to them. I'm just talking about ordinary folks, the ordinary working men and women in this province who suffer from mandatory retirement.

If you'll bear with me, I'd just like to go back a few years and you'll see where I'm all coming from. In 1942, I left school and became an apprentice piano tuner and repairer, believe it or not. That tenure at the end of five years would give me the right to practise the trade of a piano tuner/repairer.

At that time my father was working. He was employed by the city of Brighton in England as sort of a general assistant in many trades. As was the custom when the war commenced, because he was a municipal employee he was seconded to a heavy rescue group of people who went around and dug people out of ruins of the houses that had been bombed.

In 1944, when the rocket sites were overrun, obviously the need to dig people out of rubble ceased dramatically, and I can remember that he was called in and told that his services were no longer required. At that time he was 57 years old. He said, "Well, can I go back to my job?" They said, "No, you're just too old for that, but you've got your pension coming." The pension was £2 a week. Obviously, at £2 a week, even though we lived in a council house, we couldn't afford the rent. We had a family conference and we decided how best we would overcome this.

I remember—I was evacuated in the war, so I had some knowledge of farming, believe it or not—I said to my dad, "I understand that if you work on a farm you get a tied house, and that way we can circumvent the rent," because there was no way at all that we were going to go on what we called the dole. He wasn't going to have that at all.

In those days I was pretty skinny so I put on two overcoats because I figured that a farmer wanted big, strong people. I put on the two overcoats and applied for a job. I got this job, and we got this house. I just wanted to tell you that in three years my father had died. He was so overcome by the fact that he had no money, he had no work and couldn't get work. It was a steady downhill slide for him.

I had the opportunity to speak to that in Mr Winninger's bill when it was introduced in the House. At that time I said on the committee that it squandered people's talents, it forced age-based retirements. It squanders people's talents, it ruins their health and it drives many elderly people even into despair and poverty, and I said at that time that I can speak from the experience of my old father.

Later on, I worked as a fill-in policeman and I ended up in the Canadian Forces and went through a number of



courses, a number of trainings, until the age of 50. I thought I had reached the absolute height of my ability. I was not only very knowledgeable about police issues and policing, I was also a very fit person. The military in those days had compulsory training, and every day I would run 10 miles and on the weekend I would run 25 miles a day, at the age of 50.

But because it was my birthday I was called in and I was told that I had to retire because I'd reached the age limit. I knew it was coming, but nevertheless, it's very traumatic to be deprived of one's living at 50. Myself and some of my colleagues, we left, we were very bitter about it. People still continue to be very bitter about that today. We started a job search, and I must have written, I would think, hundreds and hundreds of letters. I got the *Globe and Mail*, the *Toronto Star* and all the local papers. I had a system and we all did. We sat down and we wrote hundreds of letters.

People became despondent. Some people unfortunately had had children later in life, who were going to high school and who they had to support. You may think, "Well, you got a pension." You're right, we got a pension. But the pension was based upon the fact that it didn't kick in to its maximum until you were 60. So for 10 years one had to have a job, to find employment to supplement one's way of life. I can tell you it wasn't very much.

Through this job search, luckily, I was able to secure a job with the provincial government. My colleagues were not so lucky, and the traumatic effect of all this was that when I got a job, they felt so bad about it they didn't talk to me any more. They just ignored me. One of my colleagues was so desperate that he eventually committed suicide. Being retired at 50 is a very, very traumatic experience. It's devastating, and I imagine it's no different when one gets older.

Subsequent to that, I worked for the provincial government. After I had been there 14 years and I was coming up to be 62 or 63—I forget what it is, time goes by so quickly—somebody said to me, "They're going to offer you the golden handshake." I must say I thought about this for a long time. I really am a workaholic and I didn't like the idea, but subtly they put pressure on you.

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When you get this golden handshake, your supervisor will come to you and say, "You know, you've only got a couple of months left to make up your mind." "Yes, I'm thinking about it," and there's that gentle dig. Then a month away they say, "You know, you've only got a month left to make up your mind," and you can feel this pressure being put on you because they know you've got this opportunity for the golden handshake, and people within the organization where you work are pushing for you to go. Believe it or not, that's the object: to get rid of the older worker.

Towards the end of my time I decided I wasn't going to quit because, as I say, I like working. I've worked for 50 years. I just love it and I can't see myself not doing any work, so I made the decision that I wasn't going to go. Previously, since I live close to the headquarters, I've been able to go in there and do the sorts of things that—just

through the proximity. On the day I said I wasn't going to go, I had a message from my supervisor, who lived in Belleville, that said, "As of tomorrow, you won't go in that building. You will report through me," just to make life difficult.

To cut a long story short, the next day I went in with all my documentation and I put it on the table and said, "I'm not taking that, because really you're trying to force me out in a very, very subtle way." They make out they don't. They say things like, "What are you going to do. Are you going to drive a taxi or something?" or "With your skills you could work at Canadian Tire. Have you got your application in?"—all these mundane sorts of jobs to go with your pension.

I must say I found that very upsetting to me. Here I was, had never done anything wrong in my life and then, just because of my age, subtly my employer was putting pressure on me to leave and to resort to driving a taxi. Working part-time in Canadian Tire was another suggestion, or maybe there's a job at the A&P or something like that.

Anyway, I licked my wounds and I went south. You know the story. I went down there, got fed up, came back and got a job as a newspaper reporter. I was very lucky and subsequently very fortunate and proud to be elected to be here. But I'd just like to say, in closing my thoughts, I think discrimination about retirement is as odious as racism or sexism in today's society. I don't think there's any place for it.

There are older people who are at the height of their powers. They have a great, worldly knowledge of so many things, and I think they make a wonderful contribution to society in many walks of life and wherever. I know there's a senior citizens' place near me called Wilmot Creek, and there are about 1,000 people down there. The talents there that make that place tick and revolve around it are just absolutely amazing.

I've spoken to a number of them about that and they all feel somewhat that they've been pushed out of the workplace. I know there's one fellow there who's been pushed out of an oil company and he still feels very bitter about it. So what am I saying in this committee? I appreciate your bill. I think it's in the right direction. What I'd like to say is that what we should have is a cooling-off period, I think. When you reach the age where you have to retire, be it at 50 or be it at 65 or whenever it is, you should be given the opportunity to go away and think about it.

They say: "Make plans. Work out your money. Do this. Do that." You can do all that and it doesn't make any sense at all, believe me. You should have the opportunity, after you've signed off, to look at it up to about a year or so, surely enough time to make your decision, and come back and say: "It's not for me. I really want to come back." That's the way I'd like to see this bill have the condition in it that one could return to the workplace if one didn't like compulsory, mandatory retirement.

With those remarks, I thank you, Mr Chair. I rambled on a bit but I just want to bring to the attention of the committee some firsthand feelings of what forced mandatory retirement has meant to me. It changed my career



through my parents and it changed my career later on in life.

**The Chair:** Thank you. Questions and comments?

**Mr Alvin Curling (Scarborough North):** I'm going to try to make a quick comment and maybe ask one or two questions. I'm a strong supporter of this bill in the sense that one should not discriminate because of age, but there are some realities we must face, we know, as we get older. Some of our reflexes go or sometimes our eyes go a bit and we're not what we were at 30 or 35.

I will take the approach, as Mr Winninger has, in the sense of the human rights part of it, not the economics. Economics always settle in afterwards anyhow.

Do you believe at a certain age, say the age of 55 or so, maybe the employer should have the right to ask for a medical to be done annually, testing for certain things, maybe one's reflexes, one's eyes, which may be an impediment in doing the job?

**Mr Mills:** I got the feeling about this compulsory retirement that people inwardly know their capabilities, their qualities, and if they can hoe the row. When I was in the military, we were subject to a physical examination of great intensity every year after age 40 to see if you were fit. If you weren't fit, I suppose it was, "Cheerio, you're gone."

I think most people recognize fairness to their employer, to their fellow workers, in so far as safety and things like that are concerned; they would recognize if they were going to be a burden on society. All I'm saying is that those people who feel they can make a contribution honestly, who are fit and up with it, should be given that opportunity to stay on. I don't imagine that people who are not capable would stay on, because you've got to live with yourself. If I weren't capable of doing a job, I would feel very guilty of trying to hang on, and I wouldn't do that. So I don't see that as a big problem.

**Mr Curling:** One last quick question. We all know that as we reach a certain age, our mind says we can do certain things but our body doesn't follow suit.

**Mr Jackson:** Do you have any specific activity in mind, Mr Curling?

**Mr Curling:** A specific activity? I'm sure Mr Mills would share this with us; he plays a game of cricket or so. You have seen many beautiful shots that you could have made yourself at that age, but take bat in hand and you realize your reflexes are not there and the ball is not dispatched to the boundary as efficiently and effectively as possible. The last to admit that is the individuals themselves, because they live, I don't want to say in the past, but those brilliant strokes they were making before. Did you go through those kinds of exercises at times? Mark you, you were trying to prove to the world that you were running 50 miles.

**Mr Jackson:** How good was your bat, Mr Mills?

**Mr Mills:** I'll answer that by sharing a letter I received the other day. This fellow wrote to me and said, "You know, Gord Mills, you're not as important as you think you are," but he spelled the word "important" as "impotent." So I was kind of glad of that remark.

But I agree with you, Alvin, that one tends to still think one can do the impossible. I know I do, but I think if I were working for someone and I had that honesty with myself and fairness to my employer, I'd say, "I should retire; I'm not pulling my weight," and I would step aside. At the same time, if I feel and evidence would suggest that there's no difference in my job skills and output, I should be given that opportunity to step back and look and say, "Yes, I'd like to come back."

My brother-in-law in England worked for Imperial Oil. He was retired, and they asked him to come back. He came back, and then after a little while, he said, "I can't do it." But individually, I think we should be given that opportunity.

1710

**Mr Jackson:** Mr Mills, I was impressed by your personal stories. Although one was the example of your father, where he was told his services were no longer required, albeit during wartime conditions, you also referenced your own situation, where you found yourself unemployed. You talked at length about the disenchantment and the discouragement. I'm going to ask you the same question I asked Mr Winninger, because I am concerned about this issue of why age, if it's so important in the Human Rights Code, is not being considered under your government's employment equity. If Mr Winninger had difficulty following it as a lawyer, I know that as a layperson you're not having difficulty following this.

The point is that this amendment is in the Human Rights Code and that we now are going to say to a large number of seniors who've lost their jobs through no fault of their own or their employers' that if they're not in a target group they will be doubly discriminated against, because of age.

I'm not asking you to defend the strapping young 30-year-old, who clearly is outside of it. I think the legislation understood and intended that. What I'm asking you to look at is why the concept of age isn't important in terms of protecting people with employment. Because they will be: If you're not in pay equity, you're out of it. Quite clearly, the more than half of the population who are seniors are going to be discriminated against with employment equity. You personally went through that experience. Would you consider amending the employment equity so that both pieces of legislation together provide the very kinds of protection and respect for employment of older workers that you have spoken to so eloquently?

**Mr Mills:** I don't want to put my foot in anything, but at the same time I feel that I have to be truthful. I'd like to see something built into that equity to protect the older worker. I know I have, and I'm sure you do, a number of people come into my constituency office every Friday when I'm there. These people are not 60, these people are 40, 45, and it's impossible for them now to get work because of their age. We can say, "You musn't discriminate about this, that and the other," but how do we know that when you go for a job interview—you no longer have to put down your date of birth or anything like that, and they get the form and say, "This guy looks really qualified." So you



march in for the interview and they say, "Oh, oh, look what we've got here."

How do you get out of discrimination? I think age discrimination in employment is there now in a very big way. I don't think people are treated fairly, because there's this perception these days that if you're over 30, certainly if you're over 40, that you're unemployable. It's sad.

I don't write the legislation—I don't know what my colleague was thinking—but maybe we do have to have something in there to prevent this, if we can. It's going to be very difficult because people are naturally going to scratch their head and say, "This guy might get a hernia easily," or "This guy is going to be off. We don't want that." All that goes through their mind from an economic point of view, even though they may not be discriminatory in their being. All these economic factors might go through their head. But you're right; I think so.

**Mr Jackson:** Thank you. You've given me a very honest and straightforward answer. I appreciate that very much, Gordon.

**The Chair:** Thank you, Mr Jackson. We have Ms Swarbrick, Mr Malkowski, Ms Akande and Mr Winninger, so could we have one question and a brief supplementary from each.

**Ms Swarbrick:** I was going to begin by saying that this time I do have just one question. Mr Mills, you did an excellent job of describing the problem facing senior workers in our society. I'm sure that all of us can relate to having sat in our constituency offices with people 45, 50, 52, 55 years old who are desperately trying to find work, especially in this economic situation.

Mr Winninger made reference to the projection that there will be a shortage of workers in the future. Personally, I have a hard time foreseeing that in the foreseeable future. I'm wondering if you could comment on what you think the impact this legislation prohibiting discrimination against workers after 65 years of age would have on the situation facing people who are 45, 48, 50, 58 and looking for work.

**Mr Mills:** My opinion is that there aren't going to be that many. Most people are quite happy to retire and to go away and live happily ever after, but there are a few oddballs among society, and I think that the few people who really have the drive and want to keep working would be so small as not to make any significant impact on the overall job situation.

And I think that the older, more experienced person has a great value in the workplace, their expertise, advice. How often do you see an older worker approached and asked: "You've been around here a long time. What do you think?" I believe the seniors have a network now of retired management people who will go into a place on a contract to try to put the company or organization to rights.

I don't see a tremendous impact because I don't see a tremendous amount of people who want to work, but at the same time I think those who want to work should be given that opportunity if they should.

**Ms Swarbrick:** Would you not see employers likely resorting to greater discrimination against the 45- and 55-

year-olds because of their fear that if this law passes they're then going to be left with somebody they're going to end up having to make the incompetence case about at some point? As we know, most managers shy away from that; in fact, in unionized workplaces they're very happy to end up saying, "I can't do anything with this person because the union won't let me." Would you not see in fact more employers shying away from hiring the 45- and 55-year-olds because of their fear of ending up in that bind?

**Mr Mills:** That's a good point, but I think that those hiring someone of 45 and relating it to someone who wants to work on at 65 would be few and far between. If people could be encouraged to take on the older workers, I don't think they should be discouraged because, "Hey, I'm going to be stuck with this guy till he's 72." I think that's a rarity. I don't see that happening, or I don't see that as a problem, to be quite honest.

**Mr Gary Malkowski (York East):** Your experience and your stories had quite an impact. I'm thinking about senior citizens out there who have some kind of ability to work just as young people do; I'm thinking there are many seniors out there. But let's say a senior citizen were to apply for some kind of support service similar to what disabled people apply for now under employment equity or other kinds of things. People sometimes misunderstand and think that because you're older you're unable to do certain things even though you can function well in society, and do, just as they think that about disabled people now. Do you think support services would be helpful to senior citizens when it comes to that; similar kinds of things we're thinking about for employment equity?

**Mr Mills:** I think they would. Succinctly, yes.

**Ms Akande:** I was interested in your stories and I appreciate your having shared them. One of the things I want to remind you of, as a preface to my question, is that the Human Rights Code does in fact forbid discrimination against people under 65. At some point, when I have more opportunity, I will ask you how you were asked to leave at 50.

But knowing that there's not always a positive relationship between old age and competence or incompetence, how would you suggest that people gauge the abilities of the older worker? Do you feel that the standard or the frequency would be greater than it would be for the regular worker? After all, we do have 25-year-old people who hang on and are non-productive.

1720

**Mr Mills:** I appreciate that question. Maybe I'm completely off base, but I think as one gets older one realizes very clearly one's capabilities. At 25, some people haven't got the snap to do anything, and we can't help that. Say I were still employed in my paper job, for instance, and I felt I wasn't putting out—I must say that this paper job used to entail something I didn't really appreciate, and that was selling advertising; to make the world go round, I used to do the two things. But I think if I reached that point where I said, "I'm not pulling my weight, it's just not on"—when you get older, you have the ability to discern that very clearly.

**Ms Akande:** So you're talking self-evaluation.

**Mr Mills:** Yes, self-evaluation. Then you can tell. I think the situation is a little different, too, in that when one's 65, one does have a fallback to the Canada pension, the social security pension and perhaps another company pension, so the work isn't really that important. Working is very important to me, but the compensation I get for the work is not important to me. I get great satisfaction out of working, doing things and being busy. I think when you offer people the opportunity to work on, that really is the crux of it, that they're not thinking about the money but "my contribution to society, and I feel I'm making a contribution."

When you reach that point, when you lose your eyesight or whatever it may be, you make that decision and you're honest and you say, "I can't go on," which is a lot different than someone who is what I shall call snapless at 30.

**Mr Winninger:** I'd just like to thank you for your support for my bill and for putting a human face on the issue of mandatory retirement. I'm a little curious. We all know the story of when you went south. Mr Curling said earlier that as we get older we lose some of our energy. Knowing your energy level now, I can imagine it must have been boundless as a young man. When you did go south, what brought you back here?

**Mr Mills:** I went down there and—as I said, I've worked for 50 years and I just can't bear wasting my time. To me, to retire is wasting my time. I can't bear wasting time because I think every minute of everyone's life is so precious and just to go around and mull around and say hi to George and "What'd you have for dinner?" and "Hi, Mary, are you going to play bingo tonight?" to me is an absolute waste of one's life and one's time. I put up with about four or five weeks of this and I said: "Enough's enough. We've got to get out of here before I go crazy." My wife, God bless her, understands me. Not many people would be in that position to say, "You do what you like, and if you do what makes you happy, I'm happy with you doing what you're happy doing."

I had something else on my mind I was going to tell you, but I've forgotten it. I hope I'm not accused of being—of the failings of getting older.

**The Chair:** Mrs Carter, one brief question.

**Ms Carter:** Something just occurred to me. You said hang on till they lose their eyesight or something, but of course one of the categories of people we're looking at giving job equity to is in fact the disabled, who might be somebody with diminished sight or whatever. I'm just wondering how you would draw the line.

**Mr Mills:** What I'm saying, Ms Carter, is that in my last job before I came here I was a newspaper reporter, and I proofread papers and did all things like that. What I'm saying is that in that capacity I would very easily recognize that I wasn't pulling my weight and I'd say to the boss, "Look, I can't see the print any more" and I would withdraw from that. I appreciate that the equity is for the disabled and the disabled includes the sightless person, but I just use the job I was doing at that time.

**Ms Carter:** Because there is a distinction between a particular disability and getting old and frail in a general way.

Somebody might still be very energetic, yet his sight might be worse or he might not be as good at walking around or whatever.

**Mr Mills:** Yes. I know what I was going to tell you. Just in closing, I find it rather ironic that the year before the military forced me into retirement at 50, as being over the hill and couldn't do this and couldn't do that, it was the Olympic Games in Montreal, 1976. They tried to get a composite team of all age groups in the military to run from Base Borden to Montreal. They said, "Wouldn't it be lovely if we got a guy who was nearly 50 to do it?" They said, "Sergeant Mills, would you be interested in this project?" and I said, "Very much so." So here we have an incident that one year before they said to me, "You're over the hill; you can't perform," that year they asked me if I would represent the 45-to-50 age group in running from Borden to Montreal non-stop in two days. It just boggles the mind what these people are coming up with.

Thank you very much for having me here.

**The Chair:** Mr Mills, on behalf of the committee, I would like to thank you for taking the time out this afternoon and giving us your presentation.

Having no further business before this committee, this committee stands adjourned until right after routine proceedings tomorrow afternoon.

The committee adjourned at 1726.





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- \*Winninger, David (London South/-Sud ND)

#### **Substitutions / Membres remplaçants:**

- \*Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick
- \*Mills, Gordon (Durham East/-Est ND) for Mr Wessinger
- \*Swarbrick, Anne (Scarborough West/-Ouest ND) for Mr Morrow

\*In attendance / présents

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





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## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

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# Journal des débats (Hansard)

Mardi 24 novembre 1992

## Standing committee on administration of justice

Human Rights Code  
Amendment Act, 1992

## Comité permanent de l'administration de la justice

Loi de 1992 modifiant  
le Code des droits de la personne



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 24 November 1992

The committee met at 1608 in room 151.

### HUMAN RIGHTS CODE AMENDMENT ACT, 1992

### LOI DE 1992 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

Consideration of Bill 15, An Act to amend the Human Rights Code / Loi modifiant le Code des droits de la personne.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. We'll be resuming our public presentations on Bill 15, An Act to amend the Human Rights Code.

### COUNCIL OF ONTARIO UNIVERSITIES

**The Chair:** Today our presenters are from the Council of Ontario Universities. Good afternoon. If you could, please identify yourselves for the record and then proceed with your submission.

**Dr Peter George:** My name is Peter George. I am president of the council. I'm accompanied by James McAllister, who is a research associate at the council.

I'd like to thank you, Mr Chairman and members of the committee, for this opportunity to discuss Mr Winninger's proposed amendment to the Human Rights Code. It will seem like, as Yogi Berra used to say, déjà vu all over again for David and me, I think, because we've had lengthy conversation about this topic in the recent past.

This is an issue that's extremely important to the universities of Ontario, so important that we thought it necessary that we appear before this committee. If I may, what I shall do is talk briefly to the brief we presented. I trust that members of the committee will read it more fully at their leisure. Then when I finish my introductory comments, perhaps we could engage in discussion about the brief and about the consequences of the proposed bill.

Our understanding of the bill is that it would alter the definition of age in subsection 10(1) of the Ontario Human Rights Code. The present definition of age means "an age that is 18 years or more, except in subsection 5(1) where 'age' means an age that is 18 years or more and less than 65 years." The present act permits discrimination with respect to employment for people under 18 and over 65 years of age. If this bill were to pass, the revised code would no longer permit discrimination on the basis of age to people over 65 years of age.

We believe there are important aspects to this proposed amendment to the code that would seriously affect universities and our ability to undertake our mandate within the province. In the first place, the effect of the bill would be to negate decisions of the Court of Appeal of the Supreme Court of Ontario and of the Supreme Court of Canada with respect to mandatory retirement.

The Ontario Court commented on the existing Human Rights Code section with respect to employment and we quote that decision at length. It refers to points that are of great interest to the universities. We believe that freedom to agree on a termination date is of benefit both to universities as employers and to our employees. It permits well-defined planning horizons, of course. It allows for a wage structure where employees are paid rather less in earlier years than their productivity and rather more in later years. In our case, it does provide us with concrete planning horizons, which facilitates the recruitment and training of new staff.

It has a number of other advantages. Certainly I think the most important from our point of view is that it does provide for regular openings for new workers in the university, with a regularly planned pattern of retirement for both the faculty and staff.

The Supreme Court of Canada also commented in this same case about mandatory retirement and its being the norm in many parts of the labour market in this country. Judgements of both of these courts and the concern with which the university community greets the proposed amendments flow from a series of major problems which would be created for universities were this legislation to pass. Let me look, first of all, at the issue of academic renewal.

Certainly we at the council are trying to be quite active publicly in telling Ontarians about the important role of universities and economic and social renewal in this province. I think the public, in turn, is looking to institutions of higher learning, both colleges and universities, more and more to be active contributors to finding solutions to the problems faced by our province and this nation.

Particularly in a time of economic difficulty, society has a need, for example, for the significant research output of our institutions and for the well-trained, highly skilled workforce produced by our universities and for the essential knowledge base that is continually being expanded by scholars throughout our institutions.

It is acknowledged, I think, by this government in its budget planning papers that education and training are essential features of any sort of economic recovery and that maintaining Ontario's economic competitiveness in the future will rely heavily on maintaining and improving the quality of our educational system and its products.

An essential ingredient in economic renewal is the ongoing process of academic renewal or academic revitalization. New ideas, new perspectives, new ways of doing things—all must find their place in the modern university environment. Universities must not be allowed to stagnate, must never become too comfortable with the existing ways they look at the world. Universities must always be on the

lookout for innovative approaches for doing new things and for doing the old things in better ways.

Academic renewal takes place in a number of ways. One of these is the recruitment of new, often younger, faculty members. I say "often younger," because we are finding that there are persons who would not be defined as the normal product, if you like, of the regular progression from secondary school to university to graduate school to the employment market who have gained employment in our institutions. Many of these people, I think, are female. Many of them have re-entered the educational market after stopping out for family responsibilities or other life experiences.

The recruitment of new faculty members brings new insights and energy to pursue major research activities. These faculty are a constant source of new and fresh ideas for the institution and they bring a creativity and vitality to the university community which is irreplaceable.

In recent times these new faculty have reflected the changing labour force and composition of Ontario society. For example, women now represent a majority of university undergraduates in this province. Almost 55% of full-time undergraduates are female. By way of contrast, among the existing faculty, just over 20% are female. In historical terms, women have made dramatic gains in being hired by Ontario universities in recent years. As recently as the 1970s, for example, only about 1 in 10 full-time faculty was female. These gains have been accomplished by hiring new members of faculty who reflect the changing gender distribution of the graduate student pool. Without these new hirings it would have been impossible for women and other minorities to have made such headway in gaining access.

In fact, the importance of recruiting these younger and more predominantly female faculty has been recognized in the past by the government of Ontario. In 1986, the Ministry of Colleges and Universities implemented a program of grants for faculty renewal at Ontario universities. Over the course of the past six years the government has spent \$100 million on this worthwhile initiative.

At the upper end of the faculty age profile, the government has recently seen fit to offer extensive financial assistance to universities to enable older members of staff to retire early. Among these projects funded during the 1992-93 fiscal year by the transition assistance program of the Ministry of Colleges and Universities, 14 projects, involving a similar number of universities and costing the government well in excess of \$6 million, were directed explicitly at encouraging faculty and staff to accept early retirement.

The stress by the government and the universities on early retirements recognizes that there are no major shortages of faculty or potential faculty to fill teaching and research positions. Indeed, a recently completed study in which both the universities and the government participated concluded, "Projections of supply and demand for replacement professoriate suggest that Ontario's universities are, on balance, well prepared for the 1990s in terms of increased production of doctoral candidates." An adequate

supply of faculty will be available in most disciplines in the foreseeable future.

The financial situation: Recruitment of new faculty is also a crucial ingredient to the restoration of financial viability to Ontario universities. For most of the past two decades, Ontario's universities have seen the level of financial support which they have received from the provincial government decline precipitously in relation to the task at hand. More and more students apply to attend Ontario universities every year. In most of those years, our universities have accommodated a higher level of enrolment. More and more research is performed each year at the behest of federal granting councils and the private sector.

Yet operating grants per student, once inflation is taken into account, have declined in value almost every year. Provincial support of the university system each year represents a smaller and smaller share of government expenditures. Universities have been supported by the province far less generously on a per-client basis than hospitals, schools or correctional institutions. The portion of Ontario's economic activity which goes towards university education is far less than in the past.

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A major ingredient in the financial crisis currently facing this province's universities is also the age distribution of their faculty. Every institution has in place a salary scheme for full-time faculty which on the basis of proven performance recognizes career progress and moves individuals up a salary grid that allows them to progress through the academic ranks. Many of these salary schemes provide for larger annual percentage increases in salary for more junior faculty to move their salaries up the grid more quickly. However, it is still the case that a senior person, well within the full professor rank, may earn three times as much as a more junior faculty member newly recruited into the assistant professor rank at the same institution.

The financial viability of universities is dependent on senior members of faculty retiring and institutions being able to substitute junior people in their place. However, the high levels of hiring that occurred in the 1960s and early 1970s have left universities with a disproportionate number of faculty at the senior levels.

Universities have been among the hardest hit of all our institutions by the effects of the baby boom generation. In a normal situation, the annual cost of career progress increases to salaries would be offset by the retirement of more highly paid senior faculty. Increased recruitment of staff two or three decades ago has left in its wake large numbers of senior faculty, so that instead of the demographers' normal age triangle, with large numbers of people at the bottom and smaller and smaller numbers each year of age up the triangle, we have an inverted triangle, with the largest number of faculty in their 50s and fewer people at each younger age.

The most recent information available, which is for 1988-89, suggests that over two thirds of the full-time teaching staff at Ontario universities are at the most senior ranks, full professor or associate professor, and that the average for faculty at these ranks is 52 and 47 years of age



respectively. Both of these median ages will have increased in the four years since these data were collected.

As these senior faculty age, the financial crisis will be exacerbated, at least until they reach the point where they must retire. Then they can be replaced by more junior faculty who can be hired at a much lower salary. In the meantime, universities must struggle on, coping with the financial crisis through programs of employment discontinuance, such as the early retirement of faculty and staff, layoffs and through demanding heavier workloads of the people who remain. The latter is reflected in ever-increasing class sizes and student-teacher ratios.

To suddenly abolish mandatory retirement would eliminate many of those retirement opportunities that have enabled universities to cope with the continuing financial crisis.

Information from the University of Manitoba, which operates in a jurisdiction where mandatory retirement does not exist, suggests that most faculty who are still employed when they reach the age of 65 do not choose to retire at that age or for several years thereafter.

Applying the most recent information available from that institution suggests that not being able to replace faculty aged 65 or over with younger or more junior persons would cost Ontario universities as much as \$20 million annually. This cost is likely to escalate as the bulge of faculty currently in their 50s approaches retirement age.

Third, let me comment briefly on tenure. The fact that most of these senior faculty have tenure would make it extremely difficult to end their employment if mandatory retirement were to be abolished.

Tenure exists at Ontario universities to protect the freedom of expression that is so necessary to the academic enterprise. Without tenure, the free flow of ideas so necessary to the success of the academic enterprise and its spillovers to the larger society could be called into question. However, except under circumstances of gross misconduct, incompetence or persistent failure to discharge academic responsibilities, tenure comes to an end only when the faculty member dies or retires.

If mandatory retirement were abolished, it could prove difficult to remove many older tenured professors. This is particularly the case at institutions where faculty members are unionized. In such an environment it would prove difficult to establish stricter performance appraisal systems given the role of faculty and faculty associations in the governance of the institutions.

In summary, tenure is part of a package which includes mandatory retirement. In the words of the Ontario Court in the case cited above: "By giving up the right to indefinite employment, the faculty member receives a guarantee of tenure, favourable salary benefits, and a pension on retirement. It also provides a dignified way of leaving employment without embarrassing assessments as to ability to perform work."

Tenure provides an extraordinary level of protection for senior faculty members. At some point in the life of the faculty member, that protection must come to an end, and the present system, where it ceases automatically at age 65, is both equitable and relatively painless.

In conclusion, I would say that mandatory retirement is part of a package of rights and responsibilities which includes fair and equitable recruitment policies, career progress through the ranks based on merit, freedom of expression guaranteed by academic tenure and university pension plans which adequately protect employees when they retire.

To abolish any one of these provisions would throw the rest into doubt. To abolish mandatory retirement would challenge the whole process of faculty renewal in which the Ontario government has already invested considerable resources and in the long run could weaken the universities' ability to contribute to the renewal and competitiveness of Ontario society.

For these reasons, Ontario's universities oppose Bill 15. The proposed legislation, as drafted, fails to take into account the problems it would create for the universities of this province. Those universities are already in the midst of a financial crisis, exacerbated first by the provincial government's announcement of a 1% increase in funding for 1992-93, a 2% increase for 1993-94 and a 2% increase in 1994-95. Abolition of mandatory retirement would greatly worsen the crisis already at hand.

**The Chair:** Thank you. Questions or comments? Ms Akande.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Thank you very much for a very thorough presentation. I do appreciate your point of view. I especially look at the area of cost and I can see where all those issues around cost do have a great influence on your decision to oppose this bill.

I am, however, quite concerned that you equate academic renewal, or the lack of the ability to implement it, with age. It seems to me that so many research awards have shown that the old have a great deal to contribute, when you look at the age at which many of these men and women are when they achieve that level.

So I would question you on it and I would wonder whether in fact that kind of renewal isn't more a product of a person's flexibility and ability to change styles, change directions, appropriate to the needs that are current, rather than age.

**Dr George:** I think that's a very important point and I would offer two suggestions. The first is that when it comes to faculty renewal, I think the norm has been that it is junior appointees who are entering the ranks as persons who reach age 65 retire. Those junior appointees have normally—and I say "normally"—been relatively young but not entirely so.

So it is possible, especially in certain disciplines like, for example, social work, that people are brought into the institution who are somewhat more mature, have a lot of professional service background and bring that blend of experience and academic credentials into the institution as they arrive.

The second thing I would say is that I'm a great believer in providing opportunities on a selective basis to faculty members and staff beyond the age of 65, but that does not mean I see it as a right.



In my own experience when I was a dean of faculty, I did negotiate with faculty members who were approaching retirement age for post-retirement employment. When faculty members had an especially strong research program or a teaching program or experience that was important to some of the service activities of the faculty and the university, those opportunities I thought enriched the university.

My concern is that there be the capacity for some kind of selection or choice among individuals who wish to offer their services post-retirement and to the institution to make selection from those individuals post-retirement.

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**Ms Akande:** Given that fact, then, would you be able to suggest or recommend, not necessarily now or here, some criteria upon which that kind of selection might be made? Because we're also interested in the area of fairness.

**Dr George:** In the institutions, there is an annual performance review of faculty. That annual performance review is conducted on the basis of three areas of contribution. The first is teaching, the second is research and the third is professional and community service.

What happens, in my experience—and it may be limited to my own institution and to my own faculty—as mandatory retirement looms, is that the criteria are imposed less rigidly in the annual performance appraisal. I think institutions begin to make some accommodation to individuals who are approaching retirement to ease their way into retirement after 65. However, there remain many faculty members who continue to be very good teachers in their 60s, continue to have very active research programs and continue to earn significant research grants from external funding agencies. It is those persons whose loss to the university I think is most deeply felt under mandatory retirement.

Based on the annual performance reviews, I think institutions are in a position to decide, on an equitable basis using the criteria that are normally employed in the evaluation of faculty, whom to offer post-retirement contracts to and whom not to offer them to.

**Ms Akande:** That brings us back to the point of entry, doesn't it? One other thing I was interested in, if I may, is that you mentioned there has been a significant increase in the hiring of women, especially in permanent positions, and you generalize, and other minorities. Are there statistics on the increase in the "other minorities" category?

**Dr George:** I'll ask Mr McAllister to respond to that question, if I might.

**Ms Akande:** I'd appreciate it.

**Dr James A. McAllister:** The data that we have available on a system-wide basis is pretty limited. At the present time, there's a committee of COU dealing with employment and educational equity. The first task of that committee is to design a database which will give this sort of information, and it's in the midst of doing that now.

**Ms Akande:** Will it give it and continue to monitor it or continue to collect it? Is it a process by which this information will continue to be collected?

**Dr McAllister:** It would be collected on an annual basis, yes.

**Mr David Winninger (London South):** You've certainly raised a number of interesting points, Dr George. My question has several parts, Mr Chair, and you'll have to forgive me if I go a little overtime, but I'm confident that if the Liberal members were here, they'd be anxious to yield me their time.

**Mr Charles Harnick (Willowdale):** I'm glad I got here.

**Mr Winninger:** As you know, Dr George, there are several other provinces, the two territories and the United States where mandatory retirement has, to a considerable extent, been eliminated, and the data that I was able to research shows that 1% to 2% of those who reach the age of 65 actually elect to stay on to work, and of those, two years later, nine out of 10 have already left employment. I was wondering, first of all, whether you had any figures on that, because I suspect, given this marginal 1% or 2%, that it wouldn't have a tremendous impact on your financial viability.

**Dr George:** I've not personally looked at the American data. We have presented in an appendix here for your information our understanding of the Manitoba experience which suggests a much more attenuated retirement pattern than the one that you depict for American institutions.

The estimate that we've put, admittedly a crude one, on the additional cost to the system of ending mandatory retirement is approximately \$20 million, which would be about 1% of the total transfer payment to the institutions. So I think that is one measure of the cost.

I think the other measure of the cost is a much more difficult one, and that is the opportunity cost of not replacing faculty who are staying on by new faculty. I think it's fair to say that in all cases it is not trading up from a retiree to a new faculty person, because what you're giving up is a certain measure of experience and wisdom through experience. On the other hand, quite often you are gaining in energy and in fresh viewpoints.

The tradition of the university has been that faculty renewal through the replacement of retirees by junior faculty has tended to be an enriching device for departments and for institutions. The cost of change in that policy is not something that can be measured in dollars, not directly at least. But I think my experience as an academic is that the pain of seeing a long-standing colleague depart formally from the institution is matched—sometimes under-matched, more times over-matched—by the enthusiasm with which new faculty are brought into the institution.

I think it's fair to say that in most cases retired faculty, professors emeriti, who wish to continue an association with the institution, are given opportunities, albeit less remunerative opportunities, to engage in part-time teaching, to continue with a research affiliation with the institution. The institution continues to administer their research grants if they are successful in grant competitions.

**Mr Winninger:** Given that there are, as you've indicated already, arrangements that are entered into with some faculty members who become emeritus or other



informal arrangements, surely if there were a form of automatic tenure review which would kick in after age 65, something going beyond that annual performance review that you probably have right now that deals with merit pay and things like that, you would be able to weed out some of those who no longer make the strong contribution they once did.

In addition, ancillary to that question, even though women may now represent 15% to 20% of many university faculties, could we not also have a situation of younger women displacing older women?

**Dr George:** The latter scenario is unlikely. What has been changing in faculty with the change in participation rate first in undergraduate programs, with increased female participation, then in graduate programs, is that the percentage of new recruits among faculty who are women has become higher and higher, and I expect in long-run equilibrium it will be proportional to the percentage, to the gender split, in graduate schools. I think it is an important challenge for us to see that the gender split in graduate schools mirrors that in undergraduate programs and that in faculty it mirrors that in graduate school.

That said, I think it is unlikely, given the gender distribution of senior faculty, that bringing in new female faculty will drive out older female faculty. The more likely outcome is that newer female faculty are driving out older male faculty.

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On the first point, I am really uncomfortable with the notion that there'll be a special review at age 65. I think that does strike me as age discrimination. I don't see any reason why it should be at 65 and not at 60, at 55, at age 50. The policy issue would not be a specially significant review at age 65 but a specially significant review at five-year intervals, which is a different policy issue, it seems to me.

Institutions are places of tradition too. It seems to me one of the traditions is that faculty members who are easing themselves into retirement are facilitated by their departments. If we were looking at special reviews, at special age thresholds, it would increase anxiety, increase tension within the institution and increase potential difficulty within the institution. I think the current system is an accommodation to many aspects of compensation and non-compensation matters in the university.

**Mr Winninger:** Okay, just one final part to that question: As you said earlier, often the academic career path is based on merit, and while you say that younger women won't displace older women, there will be older women who have reached the pinnacle of their success during very difficult times to advance their career to that point, individually, along with many male professors, who will be arbitrarily displaced at age 65 to keep things harmonious and comfortable within the academic sector.

I think we need to be clear that we are sacrificing some professors who reach age 65, distinguished people who actually have accumulated a body of knowledge that can make them more effective teachers and researchers than the younger, more cheaply paid faculty in many cases who

are entering the work stream. I think we need to be clear about that, that this is some kind of, I guess, pragmatism that you are advocating here.

**Dr George:** I would have two pragmatic answers to that and I think the one in particular, the second one, has a lot of social significance.

The first pragmatic answer is that institutions, even within funding restriction, have often been able to offer part-time teaching or other kinds of contracts to persons of retirement age who are able to continue to make a significant contribution in the teaching or research area to the university. I see that as something that administrations have been continuing to do. Their ability to do so has been greatly restricted by funding restraint, however.

The second thing, and the more important issue in many ways, to my mind, in terms of social significance, is that if mandatory retirement ends, if senior professors remain in place, it will mean a significant decrease in renewal appointments and junior faculty appointments. It is there where we've been making the greatest gains in terms of redressing gender imbalance and bringing in members of underrepresented groups into the professoriate, and I think the social cost of putting an end to mandatory retirement will bear very heavily at the recruitment end of the faculty continuum.

I think the cost, socially, will be extremely high in terms of opportunities for appointment forgone. We will not be able to hire new women faculty, new faculty from underrepresented groups, because senior faculty are staying on past age 65. The financial consequences of that, I think, will be disastrous for the renewal process among junior appointees and for the opportunities for redressing gender and group imbalance that those represent.

**Ms Jenny Carter (Peterborough):** I don't disagree with most of what you've said, although I have one or two quibbles and, no, I don't have a conflict of interest because I have a 64-year-old husband who is a professor. He's committed to retirement and scaling down already, although he's still getting research grants.

I don't agree that new is always better. I think we have to be very careful about that. I don't think Shakespeare has been outdone yet, although he's very old hat indeed, and of course there is also the point that you have acknowledged, that learning can be cumulative over a lifetime, so that an older person can have advantages. Obviously, they've spent more time listening and learning and thinking and should have reached a certain maturity.

But the issue that really concerns me and which I think hasn't been addressed is the person who starts his or her career late. They're more likely to be female, but it could be a man. Again, my husband switched at age 40 when he had his midlife crisis, and that was when we emigrated and did the whole thing. His academic career started at that point.

But I think if people have worked over years to gain the qualifications, have got a PhD and become employed maybe at 50 or even later, their knowledge is up to date, they're fresh and keen, hopefully, and it doesn't seem quite fair to chop those people off at 65 in the same way you would somebody who started at 30 or wherever. I presume



that their income also would not be as high as that of the person who had started younger. So I wonder whether some exception could be made for people in that category.

**Dr George:** I think that's a very good point, and the case I'm reminded of is the case of Olive Dickason from Alberta, whom I know and who I think is very good.

**Ms Carter:** Right, but I can think of others I know.

**Dr George:** I think there will always be those kinds of cases which sort of leap out at us from general policies. Those cases have been relatively few in number. There may be more in the future, but I think that will always represent a distinct minority of the cases of persons approaching age 65. I think that's a classic case, especially for somebody like Olive, who has remained a very productive scholar, where the post-retirement appointment opportunity would be exercised by an institution.

My own way of handling that when I was a dean was to say to an individual: "Obviously, it's in our interests if you can take retirement, because that means a lot of remuneration and benefits are shifted on to the pension fund. I will save that money from my operating budget. What I can do is to say I will give you a contract, post-retirement, which will pay you for doing some teaching for us, which will bring your income, if you like, up to what it would have been if you hadn't retired." That allows me to hire a junior replacement and also, in most cases, to have some fiscal savings so that the senior administration is happy too.

I think there are these kinds of arrangements that have been common in institutions. The question is, should they be a right, and whose right? Is it the right of the employee, as I think David would have it through this amendment, or is it, if I can use a crude term, a management right, something where the chairman of the department, or the director of the school and the vice-president academic, the dean and the president, decide, "This person is somebody we really have to keep around, and we would like to offer him something that makes it possible"?

**Ms Carter:** On the other hand, you see, part of your original argument was the invidiousness of having to distinguish between people who are useful at 65 and those who are not, and under this arrangement you could be back with that problem again.

**Dr George:** No, I don't think the point was the invidiousness of doing so. I think as a matter of course it would be invidious, but if it were a question of some individual saying, "I don't wish to stay on beyond retirement. I may choose to do so because I don't want to go through that review," or, "I may do so because I have better things to do. I want to open a consulting business"—I think the invidiousness comes when all at a certain age are put through that hoop when some of them may wish to retire. Then it would be a question of who wishes to continue beyond retirement, and whether that should be a matter of right for the employee or a matter of selection according to well-established, well-known academic criteria that both faculty and administrations understand and have abided by throughout their careers.

**Ms Carter:** I certainly hope there's room for creativity in the kinds of ways in which people can continue to have

some attachment after 65. I think different people have different things to offer and that variety should be there.

Just before I give up my turn, I'd like to say that I do agree with you very much about the starvation of funds that universities are undergoing, and I think that's very unfortunate.

**Dr George:** That has forced many difficult choices.

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**Ms Anne Swarbrick (Scarborough West):** Thank you, Dr George; I think you've made a very clear presentation. Am I understanding you correctly to be saying that the vacancies created by mandatory retirement are necessary for the appointment of women and other minorities, the target groups for employment equity, to the point that effectively the public policy thrust of employment equity would be undermined by the elimination of mandatory retirement?

**Dr George:** I think it would be seriously threatened by the elimination of mandatory retirement.

**Ms Swarbrick:** I assume you're saying particularly in today's economic realities.

**Dr George:** The pressure on us has been to annually reduce operating budgets in real terms, because our income has tended to grow by less than the rate of inflation and salary settlements have tended to exceed the rate of inflation. As a result, the operating budgets have been squeezed, and the normal way of handling that is through attrition of faculty numbers, which is greater the less able we are to replace highly paid senior faculty by more lowly paid junior faculty.

**Ms Swarbrick:** I thought the point you referred to from the Ontario Court decision, as reprinted on page 6, was a very interesting one, the idea that mandatory retirement is effectively a tradeoff for tenure and favourable salary benefits and pension on retirement. As someone who doesn't have a knowledge of the history of how we came about arriving at tenure in universities, was that your impression of the origins of tenure and mandatory retirement as being a tradeoff in—

**Dr George:** I don't think it was true at the origins of tenure, but I do think there has grown, over the past generation or two, a greater identification of tenure with job security.

Most universities would have dismissal procedures. Those dismissal procedures are not used very often. What happens in their stead is, in most cases, an annual performance review. If performance is good, fine; if it's not good, a series of meetings, usually with the immediate supervisor or chair or director. If it continues to be below standard for a couple of years, the meetings would be heightened. There would be attempts to encourage people to redress those deficiencies, perhaps to retool in certain areas, but there is a long tradition of moral suasion and negotiation in those cases.

I think it's fair to say that job security has become more closely identified with the tenure system. It's very hard to separate them out because academic freedom impinges on so many aspects of the job scenario.



**The Chair:** Thank you, Ms Swarbrick.

**Ms Swarbrick:** Just one last question. Is there time?

**The Chair:** Very briefly.

**Ms Swarbrick:** I'm not familiar with the situation of how decisions are arrived at in terms of how much research versus how much classroom teaching time professors are required to share, but I understood that that's a factor here as well, that as the professors become more senior they're more likely to choose, if they're allowed to, to spend more research time, and that a consequence of that can be an increase of the ratio of professors to student class size. Is that a factor in this or not?

**Dr George:** The standard practice is that each professor will be expected to contribute in the teaching and research and the professional and community service fronts. In my institution, which I think is fairly normal in its practices, those proportions would normally be 40-40-20. In performance appraisal and annual salary adjustment, the weightings would be roughly 2-2-1, teaching, research and professional and community service.

There is usually a normal teaching load in a department. It might be five courses, it might be six courses. Professors are expected to carry a normal teaching load plus a normal research load. Sometimes there are tradeoffs at the margin: A very distinguished researcher might teach a little bit less, a less distinguished researcher might teach a little bit more.

Most institutions which consider themselves to be emphasizing both teaching and research would not allow one to the exclusion of the other. It is not normal, in most institutions, to have research professors who do no teaching or to have teaching professors who do no research.

**Ms Swarbrick:** So you're saying that balance is not adversely affected by the age of the professors.

**Dr George:** No. In normal circumstances it is not.

**Mr Harnick:** Very briefly, on the second-last page of your brief you talk about the experience of early retirement at York University and OISE. The availability of that early retirement seems to me to indicate that you have almost an equal number of people taking early retirement as you have retiring after the so-called mandatory 65 years of age. That seems to suggest to me that the idea of mandatory retirement is not all that necessary if there's an early retirement package in place, if these numbers are valid in any meaningful way.

When you further factor into that the fact that a large number, or I would think a calculable percentage, certainly, of individuals have health problems as they get into their later 50s and 60s, that would be another attrition factor. So from what I read here, the idea of mandatory retirement may not be all that necessary to supply you with the numbers you need to accomplish the employment equity that you desire. Can you comment on that?

**Dr George:** Quite often early retirement is more expensive, at least in terms of annual costs, because special early retirement incentives have been used in universities, as in other jurisdictions, to enhance the rate of retirement.

I don't know the details of these particular 10, for example, who retired before the age of 65; Jim may be able to add to this. But in universities in recent years there have been a variety of early retirement schemes which have meant short-term cost in return for prospective long-term gain in the operating budget. In many cases, I must say, the early retirements have not been accompanied by replacements because of the sheer pressure to find savings in the operating budgets.

**Mr Harnick:** But a minute ago you indicated that the idea of a person retiring and coming back at a salary that would make up the difference between his pension and his actual income would have been a cost saving. By the same token, I would suggest, the idea of early retirement by way of an early retirement package and then hiring younger, less experienced new teachers would also present a saving in the longer term.

**Dr George:** It does present a saving in the longer term; I agree.

**Mr Harnick:** What I'm concerned with is that I see some inconsistency in what you're saying.

**Dr George:** I guess I don't, but that's fair enough. The fact is that any time a senior person leaves the institution, for whatever reason, you effect a saving in the operating budget. If you hire a junior person in replacement, there is some kind of net saving in the operating budget. Often with early retirements, what happens is that although the costs of that salaried member are dropped from the operating budget there are sweetener packages necessary to induce early retirement, which become a charge on the operating budget. So those will be a short-term charge, even though the person is strictly off the books in terms of being a teaching and research resource; they may continue on the books for as long as 18 months. In that case, you don't have the immediate impact of the savings; they are deferred until the end of the sweetener.

1700

**Mr Harnick:** There may still be a saving, even with the sweetener, but the saving is obviously less.

**Dr George:** Yes, and it's often used up, at least for this period of time, bridging time, before it's off the operating budget.

**The Chair:** One brief question that's arisen. Mr Winner.

**Mr Winner:** Thank you. I'm glad you came back to me, Mr Chair.

Interjection.

**Mr Winner:** Well, I could seek unanimous consent.

This is logically connected to Mr Harnick's question, actually. Given that there are people who retire anyway, and given that there are attractive early retirement packages—and I don't know if you keep data on target groups and to what extent they're being hired—would it not be possible that every faculty member who takes early retirement or retires at 65 be replaced by one of the target groups, who qualifies otherwise for academic hiring?

**Dr George:** Who qualifies otherwise for academic hiring. Let me say in principle it would be possible, but let me just point out a couple of practical issues.

One is that we are faced with a situation of relatively small numbers, in many cases. One of the difficulties we face in this whole discussion about the representativeness of university populations is that I think participation rates in higher education are relatively high for members of those groups who complete, say, six OACs in the Ontario setting. The real social challenge, it seems to me, is that completion rates through six OACs are so low. I think it's really important for all of the educational sector to work together on addressing that issue, of increasing participation rates through secondary school, through completion of the OACs, through entry into undergraduate and graduate school, and eventually into selection in appropriate numbers into faculty positions.

**Ms Akande:** I would be remiss, Mr Chair, if I didn't respond to that. May I, please?

**Dr George:** I have a second point to make first. The second thing is that because of relatively small numbers, there is a distortion in the labour market associated with representatives or members of those groups. For example, there are certain disciplines where the gender bias remains very strong. My own discipline, economics, is one of those. The labour market for female economists for academic positions is at a significantly higher salary range than it is for males who are entering positions. So there is an impact on operating budgets through an affirmative action hiring program. That's why I say that in principle that can be accomplished. There are some practical concerns that need to be addressed, but I think on balance the answer is yes.

**Ms Akande:** May I?

**The Chair:** Briefly, please.

**Ms Akande:** I think the numbers of those who graduate from those other minorities is significant; in fact, numbers great enough to make their places quite known among the applicants for these particular positions, the very well-qualified people who are frequently subsequently hired in other universities. They exist in great numbers. Having taught at one of the universities, I know this. There seems to be a pre-screening that eliminates them from the ranks.

I might suggest, though, that on page 3 you have, "New ideas, new perspectives, new ways of doing things all must find their place in the modern university environment." You also have, "In recent times, these new faculty have reflected the changing labour force and composition of Ontario society."

One of those statements is not quite true. I would suggest to you that the changes in perspective and ideas and the new ways of doing things might well come from those

who in fact are culturally different and who would be less imbued with the traditions that now exist at the university.

**Dr George:** I agree with you. One of the challenges, of course, is that by the time one goes through four years of an undergraduate program, a graduate program and often post-doctoral work, there is a time lag. I'm fully aware of that time lag, as are my colleagues. I think it is important that we do as much as we can to provide opportunities and to change the mix of faculty at institutions to better reflect Ontario society.

I would just point out that one of the things we are doing this fall is introducing a pilot study for both admissions to faculties of education and for first-year full-time enrolment at Ontario universities to elicit information, on a voluntary basis, from students as to ethnic and cultural origins and extent of physical challenge, if any. Because one of the things we are both lacking, both the universities and not just the critics of universities but those who are urging universities to move more quickly, is a database to make those issues more transparent and to inform action on those issues. We are addressing that. We acknowledge that it's an important area.

**Mr Gary Malkowski (York East):** Do you have any kind of studies or current research that now identifies the numbers of people or professors themselves who may be disabled? My second question is, do you know of any professors who have taken early retirement because of disability?

**Dr George:** I think those are important questions. The difficulty in responding is that data on professors with physical disability are really not in the public domain. Those data are only available on a voluntary basis, so they're known only on that basis within the institutions. One of the difficulties we have faced with the human rights legislation is that it is difficult to acquire that kind of information. I think it's extremely important information, but it is not immediately available. It has to be provided, I think, on a voluntary basis.

Second, I don't know of specific numbers or specific cases of individuals who have taken early retirement because of disability. I'm sure, just because of the distribution of disabilities by age, that there must be some cases of that but none that I know of in my own direct experience as an academic administrator.

**The Chair:** Mr George, Mr McAllister, on behalf of this committee I'd like to take this opportunity to thank you for coming and appearing before us today.

Having no further business before this committee, this committee stands adjourned until after routine proceedings on Monday, November 30.

The committee adjourned at 1708.





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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)
- Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)
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- \*Carter, Jenny (Peterborough ND)
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- \*Harnick, Charles (Willowdale PC)
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- \*Malkowski, Gary (York East/-Est ND)
  - Runciman, Robert W. (Leeds-Grenville PC)
  - Wessinger, Paul (Simcoe Centre ND)
- \*Winner, David (London South/-Sud ND)

#### **Substitutions / Membres remplaçants:**

- \*Swarbrick, Anne (Scarborough West/-Ouest ND) for Mr Morrow

\*In attendance / présents

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 1 December 1992

### Standing committee on administration of justice

Human Rights Code  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mardi 1 décembre 1992

### Comité permanent de l'administration de la justice

Loi de 1992 modifiant le Code  
des droits de la personne



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 1 December 1992

The committee met at 1549 in room 228.

HUMAN RIGHTS CODE AMENDMENT ACT, 1992  
LOI DE 1992 MODIFIANT LE CODE  
DES DROITS DE LA PERSONNE

Consideration of Bill 15, An Act to amend the Human Rights Code / Loi modifiant le Code des droits de la personne.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. We are continuing with our public submissions on Bill 15, An Act to amend the Human Rights Code.

DAVID BORWEIN

**The Chair:** I'd like to call forward our first presenter, Professor David Borwein. Good afternoon and welcome. Just a reminder that you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you'd leave a little time at the end for a few questions and comments from each of the caucuses. As soon as you're comfortable, please identify yourself for the record and proceed.

**Dr David Borwein:** I'm David Borwein, an emeritus professor at the University of Western Ontario. I will read part of this presentation; it's probably too long to read the whole lot.

Let me say at the outset that I am strongly and unequivocally in favour of Mr Winninger's bill and fully agree with the arguments he so ably marshalled when he moved second reading of his bill to remove a blatantly inequitable clause from the Human Rights Code, a clause which at present denies protection from discrimination to those aged 65 or more. I'd like to tell you how I've been affected by the practice of mandatory retirement which this clause underpins.

I have two doctoral degrees, a PhD and a DSc for published research work, both from the University of London—England, that is—and I'm a fellow of the Royal Society of Edinburgh. In the academic year 1988-89, I was professor and head of the mathematics department at the University of Western Ontario, as I had been since 1967 after having joined the department in 1963. I was well respected both within and without the university as a teacher, an administrator and an active researcher in an area of pure mathematics known as analysis. I had recently been president of the Canadian Mathematical Society and I had a sizeable research grant from NSERC. I was active and fully fit both physically and mentally.

Then on July 1, 1989, I was mandatorily retired against my will, solely because I had turned 65 the previous March. Despite nothing having changed with regard to my abilities, I was suddenly relegated to being a non-status academic, though I was granted the largely routine designation

"emeritus professor." No longer could I expect, as a right, to teach, to have an office or to take part in the academic activities of the mathematics department. Only after strenuous efforts was I able to obtain a minimal post-retirement appointment at a derisory salary, an appointment which has to be renegotiated each year. Needless to say, I am glad in the circumstances to have this appointment, because mathematical teaching and research are of supreme importance to me.

Seasoned and productive academics constitute an important resource which society can ill-afford to squander. It is a bizarre notion that at age 64, a world-class scientist or historian, for example, can be considered a prestigious and valuable asset to a university, but immediately ceases to be so at age 65.

Universities differ from other places of post-secondary education in that they not only transmit knowledge but generate new knowledge by means of research. Research in particular is not judged by the age of its generator but by established criteria of excellence. In the four years since I was forced to retire—actually, it's three and a half; it feels like four—I have taught, supervised a graduate student and maintained an active research program, in recognition of which NSERC has continued to fund me generously.

I would like now to mention some additional thoughts about mandatory retirement, particularly as it affects universities.

Mandatory retirement based on age is an arbitrary and unjust discrimination. It violates both the spirit and the letter of the Canadian Charter of Rights and Freedoms, which surely was meant to apply to all Canadians, not only federal civil servants. It is ironic that Supreme Court judges, whose own retirement age is 75, ruled that it was appropriate to retire university faculty at 65 in provinces such as Ontario—but not Quebec, Manitoba and New Brunswick—presumably because the judges, with the two women among them dissenting, considered that the discriminatory age-related clauses in the human rights legislation of those provinces could be demonstrably justified in a free and democratic society. I, of course, do not agree that the justification has been coherently demonstrated. At best, the arguments for retention of those discriminatory clauses represent a victory for bureaucratic expediency over basic rights.

The Supreme Court judgement states:

"Mandatory retirement is intimately tied to the tenure system which undergirds the specific and necessary ambience of university life and ensures continuing faculty renewal, a necessary process in enabling universities to be on the cutting edge of new discoveries and ideas. It ensures a continuing and necessary infusion of new people. In a closed system with limited resources, this can only be achieved by departures of other people."



But I contend that the tenure system and mandatory retirement are distinct and separable. Indeed, the University of Western Ontario did not have the tenure system before 1970, even though it did have mandatory retirement in that period. Also, people will retire, or die, even without mandatory retirement, and many will retire early. At most, the abolition of mandatory retirement would result in a temporary perturbation before an equilibrium of retirement and renewal is reached. The argument that abolition or relaxation of mandatory retirement would be a substantial economic burden has not been borne out by the experience of places such as Manitoba, Quebec and New Brunswick, where mandatory has been abandoned, or in the United States, where the retirement age was recently changed from 65 to 70. Nor have any informed estimates indicated any catastrophic consequences.

The problem of employment of new young faculty is related to underfunding of the entire system and is not a consequence of the presence or absence of mandatory retirement. We have that problem now in Ontario with mandatory retirement in place. It is also fallacious to assume that 65-year-olds do not have new and worthwhile ideas. As Madam Justice Claire l'Heureux-Dubé wrote recently:

"The stereotype of older professors clinging desperately to their posts despite declining abilities is simply not warranted on the evidence. Generally speaking, those who start by being highly productive and creative remain so as they get older, and age seems to have very little influence on the quality and quantity of work produced. Studies at the University of Alberta show that the greatest decline in performance occurs in the age groups 40 to 45 and 45 to 49, and not in the older groups as many assume."

She went on to say, "Even if the age cap were removed, the vast majority of faculty would continue to retire at age 65 or earlier." She also said, "The argument that forced retirement leads to more positions for younger academics, thereby at once allowing a fresh infusion of ideas into the institution and remedying the problem, is superficially attractive but does not stand close scrutiny."

All projections indicate that in a relatively short time there will be a substantial unfilled demand for faculty. Not so long ago it was argued that women should not be employed in certain occupations because this would limit job opportunities. In any case, basic rights should not be denied to a group for either fiscal considerations or the supposed needs of some other group.

Those entering the academic profession in midlife—as some women, in particular, do now—are especially disadvantaged by mandatory retirement. They could be reaching the peak of their professional careers when they're made to retire, without even being able to accumulate a reasonable pension.

The choice of age 65 for retirement is entirely arbitrary. For academics in the United States it is now 70, and mandatory retirement is scheduled to be abolished completely at the end of next year. That's in the United States. For Canadian judges, as you know, it's 75. For the College of Cardinals it's 80. For physicians, politicians and the self-employed there's no retirement age. Life expectancy has risen dramatically in this century. At the turn of the century

it was 45, and it is now 75. At 65, men in good health can expect to continue enjoying good health for at least another 10 years and women even longer. For gerontologists, 65 is the paediatrics of the golden years.

I don't know how the times goes. I have further material, excerpts from A Policy Statement on Retirement and Non-Discrimination on the Basis of Age by the Canadian Association of University Teachers, and a lot of material which, to my mind, puts the whole question of mandatory retirement into some sort of context, which of course you have before you. Can I proceed?

**The Chair:** You still have 20 minutes left.

**Dr Borwein:** I'll go on then.

The following excerpts from A Policy Statement on Retirement and Non-Discrimination on the Basis of Age, adopted in 1986 by the Canadian Association of University Teachers, give some background information about mandatory retirement:

"Age discrimination from a general perspective is one of many forms of discrimination which have come to be regarded as unacceptable and are being prohibited by law. It is simply the latest addition to the list of legally prohibited discriminatory practices.

"The concept of normal retirement age, the age at which an employee becomes eligible for full pension benefits, is logically distinct from that of mandatory retirement age and should be distinct in practice as well. The concept of normal retirement age was introduced in the German empire through laws passed in the 1880s which provided entitlement to benefits at age 70, at a time when only a small percentage of workers lived beyond that age. Other countries subsequently passed similar legislation. By the mid-1920s, the normal retirement age had been reduced to 65 in Germany and Britain, and Canada introduced national pension entitlement at age 70 in 1927.

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"The confusion between the concepts of normal retirement age and mandatory retirement age began with the mass unemployment of the early 1930s. Older employees were often discharged in order to continue employment of younger employees with children. In effect, older employees were often compulsorily retired, albeit not in a systematic way, and in the United States they had no pension benefits.

"The resulting situation there led to the introduction of social security in 1935, and 65 was chosen as the age of entitlement. The choice of 65 appears to have been largely arbitrary. After the Second World War, private pension plans proliferated in the United States and Canada, generally using 65 as the entitlement age. In the 1960s, the Canadian government followed suit by lowering the age of entitlement of the national pension scheme to 65. The idea of using 65 as a mandatory retirement age, for the convenience of personnel managers, then came into widespread use over the course of the next two decades. Thus the concept of mandatory retirement at an arbitrarily fixed age can be regarded as an accident of convenience which became a convention. A form of age discrimination was thereby institutionalized.



"Mandatory retirement has been regarded as being something more benign than discrimination because of the associated pensions and other benefits, especially in comparison to the situation prevalent in the United States in the early 1930s. Public opinion in North America began to turn away from this view by the late 1970s, however. The mere fact that limited financial benefits are provided does not mean that the individual subjected to this form of discrimination has not been seriously disadvantaged. The Canadian special Senate committee on retirement age policies concluded in its 1979 report 'that mandatory retirement based on age involves an infringement of human rights, economic waste, and misconceptions about the relevance of age.'

"The chairman of the American House select committee on aging, Claude Pepper, gave a similar characterization in 1978:

"Age-based retirement arbitrarily severs productive persons from their livelihood, squanders their talents, ruins their health, strains an already overburdened social security system and drives many elderly persons into poverty and despair—ageism is as odious as racism or sexism."

Then I've got things about the Canadian Charter of Rights and Freedoms. Let me skip that, because it is certainly well known to everybody here. I just say, after having listed the provisions of the act, that in response to the advent of the charter, clauses permitting age discrimination with respect to employment beyond the age of 65 have been removed from the human rights legislation of Quebec, Manitoba, Alberta, New Brunswick, Prince Edward Island, Yukon Territory and the Northwest Territories, but not yet from Nova Scotia, Ontario, British Columbia, Newfoundland and Saskatchewan. As far as I know, this is accurate, but I may be wrong.

The charter supersedes provincial human rights legislation. Thus any provincial law that is inconsistent with the provisions of the charter is "to the extent of the inconsistency, of no force or effect." Mandatory retirement evidently violates section 15(1) of the charter, as does section 10(a) of the Ontario Human Rights Code. That's the one that we're discussing right now. Whether these violations can be demonstrably justified in a free and democratic society, as stipulated in section 1 of the charter, has been addressed by provincial appellate courts. The appeal courts of British Columbia and Nova Scotia ruled that age-based mandatory retirement and limitations in provincial human rights legislation permitting age discrimination against persons 65 and over do violate section 15 of the charter and that such violations are not justified under section 1 of the charter, whereas the Ontario Court of Appeal ruled that they are justified. The conflicting rulings of the Ontario and British Columbia courts of appeal were considered on appeal by the Supreme Court of Canada which, in December 1990, ruled that the violations were justified.

Mandatory retirement has been abolished for Canadian federal civil servants and for all employees in Manitoba, Quebec and New Brunswick. It has also been ruled to be illegal by the appeal courts of British Columbia and Nova Scotia and by a government of Alberta board of inquiry. Surely the time has come for this unjust and arbitrary form

of discrimination based on age to be abolished throughout all of Canada.

Let me conclude with a quotation from the 1985 report entitled *Equality for All*, of the parliamentary committee—our Parliament—on equal rights:

"Section 15 of the Charter provides an assurance of equality without discrimination based on a number of factors, including age. In the view of the committee, mandatory retirement is a classic example of denial of equality on improper grounds. It involves the arbitrary treatment of individuals simply because they are members of an identifiable group. Mandatory retirement does not allow for consideration of individual characteristics, even though those caught by the rule are likely to display a wide variety of capabilities relevant to employment. It is an easy way of being selective that is based, in whole or in part, on stereotypical assumptions about the performance of older workers. In the result, it denies individuals equal opportunity to realize the economic benefits, dignity and self-satisfaction that come from being part of the workforce."

**The Chair:** Thank you. We have about four minutes for each caucus for questions and comments.

**Mr Alvin Curling (Scarborough North):** Mr Borwein, I just want to congratulate you for a very concise presentation. I too support this direction of abandonment of an arbitrary retirement age. You seem over the years to have taught a lot and counselled a lot. Do you see age being a factor in learning at all, that as people get older, comprehension—I ask that because at times people bring that up about attention span. Maybe I'm asking for myself.

**Dr Borwein:** I can't say that in my own experience I've seen age being a factor in competence. One area where I have seen it—in my own case it's there—is that hearing seems to go to some extent, and I have the help of a hearing aid. But I honestly cannot say that in any of my colleagues or any people I've come into contact with that age has been a factor. As I quoted, the age 40 to 45 and 45 to 50 seems to be an age where abilities lessen to some extent, or at least become evidently less, than thereafter; if people have been productive and capable up to and beyond the age of 45 and 50 they'll continue to be so beyond 65. In my experience I haven't seen this decrease in ability that's been talked about.

**Mr Curling:** Because we have a short time, four minutes, my other question is regarding the process of this bill. I want to congratulate my colleague on the other side for bringing forward this bill. I'm sure you understand that this is a private member's bill and may not see the light of day. This may be just an exercise in futility. If this does not go through the process, would you recommend this be a government bill later on? That way we might make sure it reaches reality, because this exercise may not, as I said, see reality.

**Dr Borwein:** Yes, I would certainly recommend that it become a government bill if this particular exercise ends in futility, as you say. I hope the government takes it up and makes it one of its own and thereafter will be proud of having removed a blot from the legislative record. I'm sure that in time it will be removed. It's one of these things that



may take a little time to do, but it can't go on indefinitely that you have discriminating clauses of this sort in human rights legislation.

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**Mr Charles Harnick (Willowdale):** Very briefly, sir, in your experience of many years at the university teaching level, have you found over the years that a good number of tenured professors retire early in spite of the fact that they have tenure?

**Dr Borwein:** I found that some have retired early. A lot depends on what sort of flexible pension retirement policies there are. Up to now, we haven't had a particularly easy one at the university I'm at. It hasn't been easy to get. One could retire, but one would lose quite a bit of pension doing so. It's being eased now; it's becoming easier to retire earlier without much loss, and there are people who want to. But as I say, up till now, pension benefits have not been as good as they are now and people have not wanted to retire, for that reason.

**Mr Harnick:** We had some gentlemen here last week representing the universities generally—

**Mr David Winninger (London South):** The Council of Ontario Universities. One of them is here today.

**Mr Harnick:** The Council of Ontario Universities. It was very interesting, because they indicated in their presentation that when early retirement packages were made available, as many people took that early retirement package as there were individuals who wanted to stay on after 65.

It would seem to me that if that's the experience and universities wanted to spend some money but lessen the total cost of salaries for tenured teachers, they could very well continue to make those early retirement packages available, which would continue to open up places for younger teachers—which answers that argument—and at the same time permit those who want to stay on the opportunity to stay on. The numbers they presented us were indicative of almost an equal split when that opportunity was available. Does that accord with your experience?

**Dr Borwein:** That accords with the reading I've done on the matter, but my personal experience at Western is too limited to say that. Basically, that seems to have been the case wherever this has been available: If there's been a flexible early retirement policy, people have availed themselves of it, and on the whole, wherever mandatory retirement has been removed, the actual amount of change, the perturbation in the employment profile, has not been very great.

In the United States they've had six or seven years of it now, where they changed from 65 to 70. There were all sorts of dire warnings about the consequences and they haven't come about. I have reports here indicating that this is the case.

**Ms Jenny Carter (Peterborough):** Thank you for you very complete and thorough presentation. I really agree with what you're saying, but I just want to be devil's advocate a little bit.

It seems to me that one problem that you can run into with non-mandatory retirement is that although on the

whole the people who would want to stay on would probably be valuable members of the faculty, there might be some who would take advantage of that who were not quite so valuable. How do you distinguish? If you have a mandatory retirement age everybody retires, but if you don't, then there's no way in which the good people can be encouraged to stay on some basis while the others just fall away.

**Dr Borwein:** I guess this is a problem at any age. How do you dissuade a person of 45 who's burnt out and is no longer of any use to the place he's been employed at to leave? You can offer him some sticks and some carrots and suggest that he retire. Most people take that seriously. Now, there may be one or two people whom it will be very difficult to get rid of, but surely, because of a few bad apples, you're not going to throw away the whole barrel. I think there will be difficulties, but I don't think they're major ones as can be seen and experienced elsewhere.

We've had an experimental base now where this has been happening in the United States on a very big scale. These predictions about people hanging on etc just haven't occurred. They haven't been fulfilled. I don't see it as a major problem. As I said, in one or two cases it may be. We have problems with younger people. If a person at 45 is useless, you've got to keep him on for at least another 20 years.

**Ms Carter:** Are you suggesting any means of dealing with the problem of people who may be burnt out at an earlier age?

**Dr Borwein:** There have been various reports that suggest there's no necessity to do anything special about people who are kept on over that age.

Here's something that's actually to that point: "It's concluded this problem would not be widespread. The committee also examined the question of whether older faculty might prove to be ineffective teachers and researchers whom university would be unable to dismiss because of tenure. It concluded that this problem would not be widespread. Eliminating mandatory retirement would not pose a threat to tenure."

This is a committee the American Congress asked to report on the tenure position, because they are due to remove mandatory retirement entirely at the end of next year.

In 1986, when mandatory retirement was removed from the rest of the workforce, they gave the universities a seven-year period in which to put their house in order, and this period is coming to an end in 1993. I guess the Congress asked this committee to report to it what the effects would be and whether it should defer again the ending of mandatory retirement. The committee definitely said no, it's not a necessity to, and tenure is no big problem in the universities.

**Ms Carter:** I have one other question. Sixty-five is now the normal age of retirement, which means that somebody who's had a career that began at the expected age has by then earned a full pension. Would you leave that as it is? There seemed to be some suggestion that maybe that age should be 70.



**Dr Borwein:** You mean the age of entitlement? I think that's an actuarial problem. Sixty-five may be all right, but the people who will not retire at 65 would presumably leave their pensions on hold until they did retire.

**Mr Winner:** Thank you, Dr Borwein, for speaking so persuasively in favour of my bill. Last week Dr George of the Council of Ontario Universities suggested that this kind of legislation which would eliminate mandatory retirement effectively would stifle employment equity initiatives. I wonder if you could comment on that.

**Dr Borwein:** I'm not sure I actually see the connection. As every study I've seen indicates that the actual overall effect will not be very large, I don't see how it's going to affect employment equity either.

**Mr Winner:** The suggestion is that we need to encourage entry to the professions for aboriginal people, disabled people, women and visible minorities, and if you don't remove some of the senior faculty from the universities, those target groups will not gain the same measure of entry they would if you continued with mandatory retirement.

**Dr Borwein:** All I can do is repeat that, seeing that the net effect of removal of mandatory retirement will be but a small perturbation in the overall work profile, it's not going to have much effect on employment equity or any other sort of employment. If you're only going to change the total numbers of people going in and out by a small fraction, that's not going to have a big effect on employment equity.

**The Chair:** Professor Borwein, on behalf of the committee, I'd like to thank you for taking the time out this afternoon and coming in and giving us your presentation.

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#### OLDER WOMEN'S NETWORK

**The Chair:** I'd like to call forward our next presenters, from the Older Women's Network. Just for the information of the committee, they do have a written presentation they'll be handing out after. Please come forward to the mikes. Help yourselves to the water that's there.

**Ms Barbara Greer:** I think I'll get through without; I've got a terrible cold.

**The Chair:** Good afternoon. I just remind you once again that you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you'd keep it a little briefer so there's time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

**Ms Greer:** Good afternoon. My name is Barbara Greer. I am the coordinator of advocacy activities for the Older Women's Network of Ontario. I would like to introduce my two colleagues, Nina Herman, coordinator of public relations for the Older Women's Network, and BeverlyJean Brunet, a member of the network who is an action consultant.

The Older Women's Network has, as its chief purpose, to initiate and support public discussion on issues and

action relating to the wellbeing of older women and to advocate for their security and independence.

For a number of years the Older Women's Network has been urging governments, at both the federal and provincial levels, to take action to provide for flexible retirement. We have presented briefs, met with members of Parliament and members of provincial Parliament, provincial cabinet members and policy advisers. We have had our position endorsed by the Canadian Advisory Council on the Status of Women and the Ontario Advisory Council on Women's Issues.

Government bodies have been calling for a ban on mandatory retirement for years. They include a special Senate committee on retirement age policies in 1979, the parliamentary task force on pension reform in 1983, the House of Commons subcommittee on equality rights in 1985 and the all-party Commons committee on human rights in 1988. Yet the federal government has taken no action.

The Ontario Advisory Council on Senior Citizens called for a redefinition of age in the Human Rights Code as far back as 1981. The Canadian Advisory Council on Aging, the national seniors' organization known as One Voice, the Canadian University Women's Clubs and the Ontario Federation of Business and Professional Women's Clubs are among the organizations which oppose mandatory retirement.

Nevertheless, the Supreme Court of Canada, in its ruling of December 1990 permitting mandatory retirement policies—although the court agreed they were discriminatory—shifted the issue back to the political arena and to provincial governments which had not yet banned compulsory retirement practices.

It is useful to look at the jurisdictions where mandatory retirement has been abolished. New Brunswick was the first in 1973. Manitoba amended its Human Rights Code in 1974. Quebec enacted regulations to ban mandatory retirement in 1983. The report of the Ontario Task Force on Mandatory Retirement entitled *Fairness and Flexibility in Retiring from Work*, published in December 1987, found that the dire predictions which had been made in these provinces were not borne out in actual practice. In the last five years other provinces have acted to end mandatory retirement, but Ontario lags behind.

The Ontario task force observed that forced retirement practices "are inconsistent with major trends developing in Ontario and across Canada and appear sadly out of step with the growing concern and recognition of individual rights."

The Older Women's Network is particularly concerned with the impact of these practices on women. You can understand how appreciative we were when Mr Winner introduced his bill. Thank you, Mr Winner, for your sympathetic understanding. We wish to thank the committee for the opportunity to appear before you today.

I turn now to Nina Herman.

**Ms Nina Herman:** We have received the transcript of the committee's meeting of November 23, and I wish to express our appreciation of Mr Winner's recognition that mandatory retirement has a particularly adverse effect on women, although of course it's unfair to men as well. We also note that Mr Curling and Mr Mills, who was here



last time, supported Mr Winninger's position. We thank them too.

We want to talk today about ordinary women, ordinary workers. Most of the arguments you've heard have been from faculty associations. The Supreme Court's cases dealt mainly with faculty people and we respect their position, but we are concerned about women who work in offices, who work in health care systems and who work in libraries, and these are ordinary working women.

Why does forced retirement disadvantage older women particularly? In a nutshell, it's because women have fewer resources to fall back upon when they leave the workforce than men do. What are the reasons for this discrepancy? I will begin to outline them and Ms Brunet will continue.

First of all, we have to look at the discontinuous history of participation in the workforce by women who are 55 years of age and over today.

For women who have been mothers raising families, thousands of them—those who were in the workforce at all—worked sporadically in part-time or low-paying jobs, taking time out to raise children, several years at a time, and earning little income and very few pension credits. In some occupations, women who are old today were told they had to leave the workforce if they got married. You've heard of that way back, and if you became pregnant, out you went, again forfeiting pension contributions.

Never-married women may also have had to drop out of the workforce to act as care givers to family members and they were only able to re-enter after their elderly relatives died. They receive no financial recognition for their years of care giving, and the poorly paid jobs they get enable them only to hover around the poverty line. They too have not been able to build up pension benefits.

Statistics show that even today, of women in Canada aged 45 to 64, 36% have had work interruptions exceeding 10 years, and for older women it's been longer than that. That's the first reason.

Secondly, it's well known that there is a great discrepancy between women's earnings and men's earnings. Most working women who are now in the older generation earned about 60 cents to the men's dollar while they worked because they were often relegated to low-paying jobs, to "women's jobs" in the women's ghetto, traditionally low-paying and because, even when they did work of equal value, they didn't make the same amount of money. Even today, women 45 and over make 62 cents to the men's dollar, so it hasn't changed very much for older women in full-time work. I'm not averaging in part-time work.

Few women worked for companies that provided them with private pensions. Even today, only 27% of women participate in private pension plans.

Thirdly, most women of the older generation were homemakers for most of their lives. They met the expectation of the society of their day that when you get married, you stay home and care for your family. That means they became completely financially dependent on their husbands. They built up no savings for themselves, no pension benefits for themselves. When their marriages end through widowhood or divorce, many find themselves impoverished. They may attempt to enter the workforce for the

first time in their 50s or 60s. That's the second group of women I want to talk about: those who are just entering or re-entering the workforce after 40 years, in their 50s or 60s.

Do you know how difficult it is for an older woman to get a job? Agism is rampant in our society. I don't know if any of you saw the television show last night. They had a segment of a really working-class woman who'd only been having menial jobs. Her company closed, as many companies are these days. She was supporting an invalid husband who has Parkinson's disease, giving him care. She was the sole breadwinner. She could not get another job, even in a meat-packing plant handling entrails. She was too old for that.

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If you're unskilled or your skills are rusty, nobody wants to train you. But even women who have current experience and up-to-date qualifications find themselves bypassed for younger women when their jobs are lost because of cutbacks or company closures in this age of recession. So imagine how difficult it is if you've been out of the workforce for a long time.

Women who separate or divorce may be in even worse positions than widows. The number of breakdowns in long-term marriages is increasing. Did you know that more husbands abandon their wives between their 50th and 60th birthdays than at any other time in their lives? Judges these days allow for women to receive support from their husbands for a maximum of two to three years, and then they're supposed to go out and support themselves, when they're 59 or 60.

If she's unsuccessful in finding work—I'm talking about the divorced or separated woman now—she's not even eligible to apply for assistance under a program such as the federal spouse's allowance program, which provides financial help to low-income women if they are widows or married to old age pensioners, aged 60 to 64, but denies it to separated and divorced women.

We have been advised by the federal government, "Well, she can go on welfare," rather than change that act. Do you know how demeaning it is for many women to apply for welfare? Do you know what welfare pays? In the winter of 1991, a single woman living in Toronto received a maximum of \$595 a month, or \$7,146 a year, in welfare payments. That was at a time when the Social Planning Council of Metropolitan Toronto said that the poverty line for a single person living in Metro was \$14,882. So welfare is paying about 48% of the poverty line. That's not good enough.

Let's say some miracle happens and our widowed, separated, divorced or never-married woman who is attempting to enter or re-enter the workforce after many years finds a full-time job which pays a decent wage rather than the part-time, temporary or contract work that most people are relegated to. If her job is with an employer with a mandatory retirement policy, such as the province of Ontario, she is faced with being forced out of her job at the age of 65, when she must endure the indignity of not being able to afford the necessities or amenities of life, a job that she has maybe just got when she's 59 or 60 if she's very lucky.



I'm sure you know the statistics of the increased longevity of women's lives, as has been mentioned by the previous presenter. Women who reach the age of 65 today are very likely to live to 85. How, I ask you, is she going to earn enough in six or seven years to live on for the next 20 years?

There are additional reasons why working women may face a life of poverty if they are forced to retire, and BeverlyJean Brunet will continue with this presentation.

**Ms BeverlyJean Brunet:** I'd like first to talk about older women and pensions. Many older women have not experienced the protection of union contracts. As a result, these women do not have access to private pension plans in their places of work and therefore receive no private pension benefits.

According to the 1990 document of the National Council of Welfare, *Women and Poverty Revisited*, only 57% of the women who retired in 1989 received any Canada pension plan benefits at all. For these women, because of a work history of low wages, the average annual payment was almost \$2,200 less than the average payment for men who retired in the same year.

In her book, *Whose Money Is It Anyway?*, Ann Finlayson pointed out that the main beneficiaries of the Canada pension plan are men who retire on full pensions, just as the main beneficiaries of the trend towards early retirement are men who can afford to retire early. While they are collecting their Canada pension plan benefits, it is the increasing number of women entering the workforce who are paying the premium for these pensions.

Concurrently, most women pay a higher percentage of their salaries into CPP and they remain at work many years after male early retirees because they cannot afford to retire. The plan, which was designed to transfer wealth from younger contributors to the elderly, is also transferring wealth from women to men. Women are both the rescuers and the victims of this system.

Older women are also concerned about the break in universality of the old age pension. We worry about how much longer this formerly dependable small amount of money will be available to those who need it.

In summary of the reasons why older women are at quite a loss because of mandatory retirement age, I'd like to say that because of the discontinuity of our work history, our entry or re-entry into the labour force during our mature years and the lower wages we receive while working for pay, women who are now old have been unable to save for our years of retirement from the workforce. However, we are held responsible for the systemic discrimination practised against us, and as a result, many older women suffer their poverty in silence.

We are here today to speak in support of the private member's bill. We believe the way to lift the burden of mandatory retirement is to remove the upper age limit from the Human Rights Code. We understand, however, that there are arguments against this bill, and we would like to briefly address three of these.

The first argument one frequently hears is that if there is no mandatory retirement, people will just keep on working. In Canada, given adequate income, most blue-collar workers and middle-management people will

choose retirement. Professionals and others in jobs which involve commitment and fulfilment in the work role will choose to continue to work.

In the United States, the Age Discrimination in Employment Act was passed in 1967. It removed the maximum age limit for all employees in the private sector and state and local governments. Since the passage of this act, it has been discovered that many people opt for early retirement. It is the highly professional and the poor who opt for working beyond the conventionally accepted age of 65, and only 10% of these two groups choose to do so.

The second argument one hears very often is that if there is no mandatory retirement, older people, by working, will prevent young people from entering the workforce. A United States Department of Labour report of 1982 indicated that most people choose to retire before age 65, promotion of younger workers continues and the rate of youth employment has not been affected. As well, because of the smaller numbers of 15- to 24-year-olds in the population, the Ontario Ministry of Skills Development in its report, *Ontario's Labour Market: Long-Term Trends and Issues in the 1990s*, predicted that during the current decade there will be zero growth in the number of young people in the labour force.

The third argument one hears very often is that as people age, their abilities decline. According to research, a retardation of reflex reaction time can be noticed when people are in their 40s and other physical signs of slowing down soon follow. However, for the vast majority of people, mental and intellectual functioning remain intact until people are in their 90s.

As well, older people have the knowledge of their experience to compensate for diminishing physical activity. They do not have to resort to the trial and error method in order to complete a task. Furthermore, older people tend to have fewer extraneous demands on their attention and are able to focus on their work for longer periods of time. Indeed, statistical studies indicate that older workers have a very good record of getting to work on time and of taking fewer sick days.

#### 1640

In a study done in the United States by Robert Harootyan on older workers and technology, three important results came from his research:

(1) Workers are expected to "fit" the work environment, rather than the other way around. This has implications for many other people besides older people.

(2) Workers, particularly women, of 35 years of age or older are overlooked by their employers for training and retraining opportunities in the workplace. One may ask, do people who are in their 60s appear to be redundant because they have not had the opportunities to keep up to date with what is going on in their workplaces, rather than the assumption that's usually made?

(3) Older workers take longer to learn new technologies, but once having learned to use them, are more productive and efficient.

In conclusion, the Older Women's Network received a copy of the letter written on April 24, 1991, to Premier



Bob Rae by the Ontario Advisory Council on Women's Issues, and we would like to quote two very brief paragraphs:

"The Ontario Advisory Council on Women's Issues joins the Older Women's Network in their call for amendments to the Ontario Human Rights Code to remove the upper age limit, and for the introduction of a flexible retirement age.

"We urge you to remain true to your commitment to improve the status of women and amend the OHRC so that aging women are protected from discrimination."

We agree with what Bob Rae told us in 1989, that pension reform and a guaranteed annual income are better solutions to the problem of poverty in old age. These are, in light of the present recession and the federal government's fiscal policy, long-term solutions.

We are living in the here and now and believe that rather than sending "Happy Instant Poverty" greetings to the women of this province on their 65th birthdays, the Parliament of Ontario should support Mr Winninger's private member's bill and vote in favour of lifting the upper age limit in the Ontario Human Rights Code.

**The Chair:** Thank you. We have time for one brief question each.

**Mr Curling:** First, thank you very much for your presentation. On my brief question, maybe Ms Brunet may be able to help me on this. Your memory and your experience maybe are better for informing me of why it is that after, as you said, this issue has been around and presented from 1981, it has not really broken through the ice or broken through the barriers of having government pay enough attention to amending the Human Rights Code so that this discrimination would be out. Is there anything that comes to mind to you, as the groups or advocates for this cause who come forward, why government has not advanced that?

The (b) part of that question, which I hope you can find, is a supplementary. If this fails through the private member's bill—and I asked the question before—would you be coming forward again and pushing the government to make it a government bill so that it should amend the Human Rights Code on a government bill? Because this, I know, will die its own death as time goes on.

**Ms Brunet:** I'll start and anyone else can add, please. To start with the second part of your question first, the Older Women's Network has been pressing for a flexible retirement age for a number of years now. If this private member's bill as it is should not go through, we will be disheartened but not discouraged to the point that we will cease pressuring the government to have this altered.

There are a number of groups, and the speaker who spoke first mentioned one of them. Apparently, it is convenient for the personnel people in large organizations to have the cutoff date of 65.

Also, unions fought during their early history for the opportunity for workers not to drop in their tracks, and the historical momentum continues there. There are individual union people who are beginning to look now at this issue rather than turning a blind eye to it, as they have for so long. When I first started to speak to representatives of unions, they gave me the impression that they did not want to talk about this at all, because they had worked so hard to

get mandatory retirement that they didn't want to relinquish it, but I see that not continuing.

**Ms Greer:** The need for flexible retirement is perhaps more of a women's issue than we quite realize or than the world quite realizes, and women's issues have tended not to be on the agenda particularly.

**Mr Harnick:** It strikes me, as I've listened to people come before this committee, that the more institutionalized the group that comes here, the more likely they are to be opposing the idea of permitting people to work beyond the age of 65. As you say, unions fought long and hard to permit people the opportunity to retire early on decent pensions, and we still see that in terms of what unions want to do for their membership.

Going through the agenda, I see that the University of Toronto's going to be here on Monday. My bet would be that they're going to be fully in favour of mandatory retirement. I suspect the Ontario Confederation of University Faculty Associations—it's going to be here on Tuesday—is going to be in favour of mandatory retirement. My bet is that the Canadian Manufacturers' Association is going to be in favour of mandatory retirement. I could be wrong. But it seems to me that the more organized the group, the more institutionalized the group is, the more likely it is to favour mandatory retirement.

In terms of your dealing with these groups to show the other side of the story—you know, what happens to those who haven't had the opportunity to work to the rule of 90 so that you can retire as a teacher when you're 55 if you've been teaching for 35 years and you can retire early; or if you're an auto worker and you've put in the number of years to draw your full pension. I think those places, those institutions, have not really understood the plight of the unorganized worker, the person who makes up 65% of the labour force, as opposed to 35%. What has been your experience in dealing with these, what I call institutions, in terms of trying to have them recognize your plight?

**Ms Herman:** I don't know that we have had much direct contact with these larger institutions, such as the Canadian Manufacturers' Association, and as far as the unions are concerned, we perhaps have not done as much work with them as we should, but BeverlyJean has mentioned that we have made contacts with certain women's caucuses within the unions that I think are beginning to, as she indicated, look at the position of unorganized women and how this affects them.

1650

**Ms Zanana L. Akande (St Andrew-St Patrick):** Thank you for your presentation. It was very comprehensive, and it pulled together so many things so many of us within the women's movement have been dealing with for so long. I do appreciate it; it's nice to have it reaffirmed.

One of the things that strikes me again and again in the presentations as I've been hearing them is that when you listen to men speak about the issue it becomes one of personal or more idealistic concern. When you listen to women speak about the issue, especially older women, it becomes one of practicality, one of necessity, one where



need is emphasized rather than just a desire to work. Would I be correct in describing it that way?

Do you feel that there should be perhaps a response that allows for the changes in society that are current today, that cause a situation of need today for older women, and do not necessarily allow for a total change in the imposition of age for mandatory retirement; for example, some kind of accommodation which would allow rights to older women that would not be generalized to allow for all?

**Ms Herman:** This is something we haven't discussed, but I don't think we would favour something that would discriminate on the basis of gender. It would be discriminatory, and I don't think we want something that would be discriminatory towards men who need to continue to remain in the workforce.

We did not comment on the other reasons why women might want to stay in the workforce because we didn't want to take the time and because we felt the economic reasons were the most important. But there also are many women who derive psychological benefit from remaining in the workforce because their identity—these would be more highly trained women—is tied up with their work role, with the social life with their colleagues and because they want to feel they still do have skills to contribute and want to feel in the mainstream of life. Psychologically it hurts many women too to be forced out of the workforce.

**Ms Akande:** I appreciate your saying that, because I did not want to leave with the impression that there was—

Interjection.

**The Chair:** Thank you, Ms Akande. Ms Greer, Ms Herman and Ms Brunet, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and coming to give us your presentation.

EDWIN DANIEL

**The Chair:** At this time I'd like to call forward our next presenter, Professor Daniel from McMaster University. Good afternoon. Once again a reminder: You'll be allowed up to a half-hour for your presentation; the committee would appreciate it if you'd keep your remarks brief to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and proceed.

**Dr Edwin Daniel:** My name is Edwin Daniel, and I'm a professor at McMaster University. This is the first time I've ever been in Queen's Park, in this building, and I'm here for a different kind of reason than the powerful reasons you just heard from the last three people who appeared before this committee.

I've been very lucky and I've been very fortunate in my career, because I'm now, at age 67, still an active scientist, for the moment not retired, but facing retirement within the year. So I want to give another perhaps human aspect of why mandatory retirement is illogical and loses people who are valuable for the future of this country and to the economy of the country.

I've summarized in my little statement why I believe I'm still an effective educator and scientist and I don't intend to pursue that, except to say that I think the main

reason I am successful and still active is because I have enjoyed every minute of the 40 years I've been teaching and doing research.

But the point that has brought me here, the reason I'm here, is that I believe it is time to consider mandatory retirement as outmoded and to consider bringing forward a flexible retirement plan which will deal with not only the problem of women late in the workforce but also professionals like myself who can continue to be active and effective as they get beyond age 65, and at any particular age may or may not need to retire.

Let me put it this way: There is no biological basis for retirement at age 65 or any other particular age. Individuals vary. Some need to retire perhaps at age 50, or at least to change course; others may not need to change course even at age 80. But it's an individual matter determined by health, by motivation and perhaps by one's good health and ability to continue.

I would have liked to briefly consider some of the arguments for mandatory retirement, but I've heard them dealt with so fully by the speakers who've been here before me that I'll simply summarize it very briefly. There is no evidence based on recent data from the US that abolishing mandatory retirement leads to a sudden persistence in employment of many individuals who are merely marking time. In fact, the average age of retirement of university professors has not changed since the lifting of the early mandatory retirement there several years ago. I predict that it will not change in Ontario should that be the case.

I've been told by some of my administrative leaders that mandatory retirement is necessary to allow young people to take the place of older scientists like myself. I refute that statement, because I have already trained 88 scientists who are now active in Canada and the US and elsewhere in the world, and I still have seven graduate students. I think perhaps my biggest contribution is that when young people start out in the profession, it's very hard in these times to get started, to get a research grant, to begin work, to establish oneself and to achieve tenure, and it's best done—and I think I'm pretty good at helping do it—when you come into a place where there's somebody who gives you support and helps you in all the necessary ways to get started. I've done that for many people and I'm continuing to do that. I will not be in a position to do that should I be compelled to retire and to give up the science and education I love very much.

It seems to me that the real arguments for mandatory retirement are entirely bureaucratic. They have no basis in anything other than the desire to have simple rules, the ability to force people out at a certain age irrespective of ability or motivation. It seems to me that as the population ages, if we continue to have mandatory retirement, more and more people will have to be supported by pensions. We have to face the fact that people who are still productive and capable of being productive have to continue in the workforce, have to continue to be economically productive and producing material things and useful things for the country rather than being compelled to live, in a sense, on their past activities.



In the long run, not only for the good of those of us who are either needful or desirous of continuing to work but for the economic good of the country, we need to continue to allow people to work beyond any mandatory date as long as they are productive and effective.

I believe in flexible retirement. I believe that people who are no longer interested or motivated to do their work should be given humane options to leave it and to change careers. But for those who are active, motivated and effective, mandatory retirement seems to be a bureaucratic and poor solution.

1700

**Mr Curling:** Thank you very much, professor, for making your presentation. Welcome to the building. The first time I entered here was when I was elected, after passing by every year for years. I'm sure that your contribution here will resound through the halls long after you're gone.

I'll comment rather than asking you a question. I think this is a human rights issue. Debating it or sitting through these committees, I say to myself that I don't know why we're even debating trying to change a law that is so discriminatory. Any law or any society that locks people out because of religion, sex, race or age is discriminatory.

The economic issue is an issue completely apart from that. Productivity or competence is another issue, and that itself can easily be assessed; if someone is not competent, whether 19, 20, 25 or 75, they should be dealt with on that basis. Of course, race or religion can also be dealt with if it conflicts with one's belief, if they're doing something; that's another issue.

But to shut people out because of age is something that—I would say it's a waste of time of Parliament or yourself coming here trying to change that. I just want to commend you for coming here. This being a private member's bill, it will not see the light of day, and I hope the government will take it up immediately and say, "We will put it in as a government bill." I'm right beside Mr Winner and yourself to have that changed.

**Mr Gary Malkowski (York East):** Thank you, professor, for your presentation. It was very impressive, and I'm certainly impressed with the work you've been doing. Obviously your age has not had an impact on that work. I'm wondering whether in your experience, or maybe if you know other college or university professors, other people have been forced to take early retirement not only because of age but because of disability. Do you have any comments on that?

**Dr Daniel:** Early retirement has become a fashionable activity in universities these days because of the restructuring necessary in financial constraints. I'm not sure that early retirement, unless properly thought out, is a very good solution for productive people. I know some professors who've taken early retirement and then gone on to take another job in another place. Early retirement is necessary and useful, but I don't believe it should be applied in a careless way to solve economic problems. There have been cases where it's been very valuable, but also cases where it's been a serious mistake.

Flexible retirement needs thought. It requires new institutional arrangements, but they will never happen until flexible retirement becomes the norm rather than the exception.

**Mr Malkowski:** If I can just follow that up, you mentioned it's a bureaucratic problem. Can you give me an example of what you mean by "bureaucratic systemic problem?"

**Dr Daniel:** People will say, if you don't retire, what happens with your pension? Do you continue contributing to your pension fund? Are you compelled in some cases to take your pension fund? I have to take Canada pension because I'm over 65, yet I immediately lose this through income tax. So that's not an intelligent solution. It would be better to hold off giving me the Canada pension as long as I'm still actively employed.

There are also questions about contributions to my pension plan: Should I continue to contribute? Let's say there are some of us who contribute above what's called a DNR max. What should we do if we continue to be employed and the chief income is of that sort?

There are many small problems, each of which could be solved if attacked individually and if there was an incentive to attack it, but so far they are simply ignored.

**Mr Winner:** Professor Daniel, thank you for coming here today and sharing your views with our committee. Unlike Mr Curling, who thinks this bill will never see the light of day, I prefer to think that in our enlightened government all points of view should be heard, and those that win the day will determine whether or not this bill should advance to third reading.

In your statement and summary you show that you have been very active in university affairs and in fact were president of the McMaster University Faculty Association last year, so I gather that you have considerable knowledge of faculty positions. I'm just wondering whether there are not professors you know of who may be women or new Canadians who, unlike you, have just started their careers late in life and may be even more unjustly deprived of the right to earn a living after age 65 or to carry on with their productive research or educational activities.

**Dr Daniel:** What you say is entirely true. There are many women who are—let me say it bluntly—often in part-time positions in the university. They don't have tenure and they don't have comparable salaries, and for those people, for those women in particular, the necessity of retiring at age 65, as you heard previously, can be disastrous because they have not accumulated enough income to survive on a pension. In my case that's not the problem; in my case the problem is that I am active and wish to continue to be active.

Let me correct one thing that was said earlier. The Ontario Confederation of University Faculty Associations is not in favour of mandatory retirement. It is a mistake to believe that. In fact, I'm here at the suggestion of OCUFA, although I'm here as an individual.

**Mr Winner:** The gentleman sitting behind you may disagree. We heard a different point of view expressed last week by the Council of Ontario Universities.



**The Chair:** Professor Daniel, on behalf of this committee I'd like to thank you for taking the time out this afternoon and giving us your presentation.

Seeing no further business before this committee, the committee stands adjourned until after routine proceedings on Monday, December 7.

The committee adjourned at 1708.







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**Substitutions present / Membres remplaçants présents:**

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**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service



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## Official Report of Debates (Hansard)

Monday 7 December 1992

### Standing committee on administration of justice

Human Rights Code  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Lundi 7 décembre 1992

### Comité permanent de l'administration de la justice

Loi de 1992 modifiant le Code des  
droits de la personne



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 7 December 1992

The committee met at 1533 in room 228.

### HUMAN RIGHTS CODE AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

Consideration of Bill 15, An Act to amend the Human Rights Code / Loi modifiant le Code des droits de la personne.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. We'll be resuming our public hearings on Bill 15, An Act to amend the Human Rights Code.

### UNIVERSITY OF TORONTO

**The Chair:** I'd like to welcome our first guests from the University of Toronto. Good afternoon. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

**Mr John Murray:** I'm John Murray, legal counsel of the University of Toronto. With me are my associate from the law firm, who's also a professor at York University, Shirley Katz; Professor David Cook from the University of Toronto, who is vice-provost of the University of Toronto, and Martin England, who is in the planning office of the university and is familiar with the issues surrounding mandatory retirement in the context of the university.

**The Chair:** Just for the committee's information, their brief won't come in until later in the month because they have a few other things to finalize, so there won't be any written presentation today.

Just a reminder that you'll be allowed up to a half-hour for your presentation. The committee members would appreciate it if you'd leave a few moments at the end for questions and comments from each of the caucuses.

**Mr Murray:** Thank you, and thank you to the members of the committee for inviting us to speak today. It is a subject of some importance to the University of Toronto and to universities in general. The remarks I make today on behalf of the University of Toronto do not intend to ignore, in one sense, the context in which this bill comes forward; that is, the context of a larger workforce. The elimination of mandatory retirement in that larger workforce would have significant impact, obviously, on the fabric of society and on the organization of the labour market, but our remarks are going to be more precisely related to the University of Toronto and the implications of the abolition of mandatory retirement to that institution. I don't want to appear that we are completely egocentric, but it is the institutional issues which we choose to focus on today.

Let me put our submission in a larger context of institutional purpose. You will know, from your own experience, that the purpose of the University of Toronto, like any other university, is the advancement of learning and dissemination of knowledge and, to quote from its own enabling legislation,

"the intellectual, social, moral and physical development of the members and the betterment of society."

These noble aims are in fact achieved with faculty, in an environment where the advancement of learning and dissemination of knowledge can flourish. It's in the context of that statutory and institutional mission that I would like to address mandatory retirement and the potential adverse impact of mandatory retirement on the institution.

In the context of the university's purpose and mission, I would, on behalf of the university, like to ask the committee to consider the adverse impact of the abolition of mandatory retirement in three specific ways: first, the impact on faculty renewal; second, the impact on institutional planning and on the ability of the university to plan; third, the impact on faculty evaluation, academic freedom, tenure and related matters.

Let me deal first, if I might, with faculty renewal. The university's purpose as a creator and disseminator of knowledge has an important public aspect to it. In this province in particular, it is a public function which the government supports. Through scholarship and research, the universities push forward the frontiers of knowledge and, through teaching, they provide post-secondary education for an ever-increasing and diverse number of students. Faculty renewal is an important component in this mission and is necessary in order to fulfil the mandate they have.

Mr Justice Gray, who at the first instance dealt with the mandatory retirement issue in the Supreme Court of Ontario, said as following with respect to faculty renewal: "Faculty renewal provides the vitality that is essential for institutions charged with keeping pace with changing ideas and student demands," this fundamental concept of faculty renewal and keeping pace which is at the core of this first point.

Dr John Evans, who was dean of the McMaster faculty of health sciences and who subsequently was president of the University of Toronto, dealt with faculty renewal in the context of a changing environment, changing demands not only of the academic environment but change in knowledge. He said as follows:

"The inertial forces to which universities are subject often inhibit them from keeping pace with the rate of change of knowledge in society. An example is the discipline of biology. Fifteen years ago, molecular biology and genetics emerged as an exciting area of research with a disciplinary basis quite different from conventional biology." Today, there is a strong consumer demand in society for graduates, research and development in these subjects.

"Further, the growth of molecular biology is not an isolated event. It affects other disciplines including medicine, agricultural forestry and law, but penetrating these academic disciplines requires faculty additions or replacements. It is difficult to introduce new ideas which would compete with those already in place."

"The turnover time of knowledge in some fields is much shorter than the turnover time of professionals in the universities and exceeds the capability of the existing professoriate to adapt. The gap is widening in disciplines in which the rate of change is rapid."

I won't quote the rest, but the point of his comments, which were in fact given as evidence before the courts in the mandatory retirement case, is that a tenured professor has an academic career of 30 to 35 years, assuming retirement at age 65, and to eliminate mandatory retirement and extend the career of a normal professor would reduce the adaptability of the university to change and would add to the inflexibility and rigidity which already weaken the university system. The point is that mandatory retirement is part of a complex arrangement which does identify at a certain point of time and provide an assurance that resources can be freed up and available for faculty renewal in the same discipline or redirected to another discipline.

1540

So the abolition of mandatory retirement would frustrate, if you will, the turnover of faculty, which would then be delayed by on average between five to 10 years, placing the universities in greater jeopardy of becoming obsolete in rapidly changing disciplines.

This is important also, it seems to me, in the context of a closed economic environment, where the institution itself has very limited ability to change its funding base, as this government and other governments will know. It does not have the freedom to control its own finances: It is dependent in large part on government grants and it doesn't have the opportunity to generate funds on its own to create the renewal. So renewal, to the extent that one can agree it's appropriate and prudent for an institution to embrace faculty renewal, is something which in many cases must come from within, and the economics to provide for that renewal must come from within.

It also seems to us to be important that the university maintain its ability to be at the forefront of knowledge and development in areas which are subject to rapid change.

The demands for change in knowledge and research are also related in part to changes in the student demographics and their interests. Dr Evans has commented that recently there has been a change from physical to life sciences, and the universities must maintain an ability to reflect in their teaching the demands and the preferences of the students which come to them, and that also goes to the point of faculty renewal.

The Bovey commission of 1984 dealt with Ontario universities' options and futures, and also focused on the important point of faculty renewal. The commission report stated, among other things, as follows:

"During the course of our hearings, we heard a considerable body of evidence pointing to the very impressive benefits which would accrue to the system if the opportunity to appoint younger faculty were restored to a more normal level. The abnormal faculty age of distribution which has resulted from a dramatic increase in staffing in the 1960s and 1970s has meant that with currently relatively few retirements there are few openings for the present generation of young scholars and teachers.

"The presence of an appreciable number of talented new faculty would enhance instructional quality and adaptability

and also assist in building up desired centres of strength in key developing fields of research and instruction. We would be replenishing our stock of human capital.

"To the degree that a more normal number of new appointments occur, improvement in the proportion of women faculty would be possible. Moreover, the additional appointments would greatly aid in enlarging the capacity of the system to cope with the enrolment pressures to be faced at the end of the decade.

"Finally, these younger faculty, if put into the pipeline now, would be available to replace older faculty in the earlier half of the next decade as the rate of retirement of such faculty begins to accelerate. Such bridging to the 1990s is a most desirable component of sound long-range planning."

The present age structure of Ontario universities and university faculties is unbalanced. It is not anticipated that sufficient funds will be able to permit faculty to remain after age 65 and at the same time recruit sufficient faculty to ensure flexibility and renewal. This, in part, is related to the very closed economic environment in which universities operate.

The government of Ontario has recently offered extensive financial assistance to universities in order to permit older staff members to retire early. Among those projects funded during the 1992 fiscal year by the MCU transition assistance program are 14 projects involving 14 universities and costing the government in excess of \$6 million, which funds were directed explicitly at encouraging faculty and staff to accept early retirement.

At the University of Toronto, as large cohorts of faculty members hired by the university during the expansion of the system in the 1960s reached scheduled retirement age in the 1990s, significant opportunities for renewal exist. As positions fall vacant, they become available to the very large cohort of students who have enrolled in PhD programs in anticipation of this opportunity. Doctoral enrolment has increased by nearly 60% over the last decade, and this growth in PhD programs has been financed deliberately for this purpose by MCU.

The impact on youth unemployment is inextricably connected in the university to opportunity for young PhDs and the rapidly changing technical and scientific environment, and is necessary not only to create opportunity for PhDs who have been educated to take advantage of this opportunity but also to stay at the forefront of knowledge and research.

There is also, it seems to the University of Toronto, another fundamental societal objective which can be achieved by maintaining mandatory retirement in the context of universities. The government, and indeed universities and employers in this province, are becoming more aware as the days go on of the necessity of creating employment equity opportunities to those who have not participated fully in society and its opportunities. This is as true for the university communities as perhaps in others. The University of Toronto has an employment equity policy already which does recognize four designated groups which have been traditionally disadvantaged in employment, and those are the same groups which the government of Ontario has recognized.

The University of Toronto believes that appointments of women and visible minorities, aboriginal peoples and persons with disabilities enrich the university in its curricular and



research endeavours and provide role models for students and for society at large. The abolition of mandatory retirement in the universities will, it is submitted on behalf of the university, adversely affect those opportunities.

To be sure, the Premier's adviser on race relations, the Honourable Stephen Lewis, has made comments relating to governances of universities indicating that those governances themselves ought to more accurately reflect the community in which these institutions live. It is our submission that the faculty also reflect the changes in society and in the student body which attends the University of Toronto at present.

In conclusion on the first point, mandatory retirement at 65 permits and encourages faculty renewal and flexibility with respect to new appointments which address a number of vital concerns. As new appointments are made, the face of the professoriate will change gradually through the 1990s. The opportunity exists to hire proportionately more Canadians into the professoriate, to redress gender imbalance, and to increase the numbers of those who are not at present well represented in the professoriate. The abolition of mandatory retirement would jeopardize, if not eradicate, the opportunities that now exist with respect to faculty renewal as a result of retirement of those over 65.

The second and third points I am going to make on behalf of the university re the adverse impact will not be so lengthy. Let me just touch on them briefly so as not to encroach on the time allotted.

#### 1550

The second point is financial planning and the adverse impact the elimination of mandatory retirement would have on the university's ability to plan. The University of Toronto, like other universities, can respond to financial exigencies and to fiscal restraint in large part by retirements and term appointments.

As in the case of all universities in Ontario, the U of T is in the process of implementing stringent budget reduction strategies to reflect the new fiscal reality in Ontario and the level of grants it receives from the government of Ontario. Universities are labour-intensive organizations, and faculty salaries, at least at the University of Toronto, constitute well over half the total cost of program delivery.

To give you an example of what's happening at the University of Toronto now, the existing budget plan through 1995-96 calls for the reduction of approximately 135 academic positions, primarily through the non-replacement of scheduled retirements of faculty and others at age 65. The transfer payment freeze will demand even greater restraint and deeper reduction than those already planned.

Absent the flexibility afforded by mandatory retirement and scheduled retirements that flow from the university's policy regarding retirement at age 65, it will exacerbate the problem, compromise existing budget reduction plans and create uncertainty for the future.

With respect to the third point—that is, the adverse impact on academic freedom and the evaluation of faculty—it is necessary to keep one thing in mind, which I think is sometimes forgotten by the outside world, if I can refer to those outside the university as “the outside world.” A fundamental and core value of universities is academic freedom which, as most of us will know, is an imperative in a free and democratic society.

A well-known academic administrator, Dr Sibley, has said this about academic freedom: “The principle of academic freedom is the central animating principle of a university and is crucial to its mission. Academic freedom ensures that the university can maintain within itself a healthy balance between orthodoxy and dissent, established knowledge and untrammelled exploration.”

Connected to that and fundamental to that in the university system is the concept of tenure, and tenure has really meant that universities have, in order to protect the value of academic freedom, given up the right to terminate except for egregious misconduct of faculty, the theory being—and the fact being—that faculty must be allowed to explore without consequence their valid areas of research and scholarship.

In the absence of mandatory retirement at age 65, one of two things will happen: Either tenure until death will be the option of faculty, which will not, in my view, enhance the academic mission, or second, if tenure is not a given until the individual elects to leave the institution, then the university would have to address the question of how to evaluate, for purposes of determining continuing employability, the performance of the faculty. In a world where 65 is not a cutoff, there will be no age-related performance evaluation permitted for purposes of determining employability.

The concerns that the university, and I hope its faculty, would have over this are the potential adverse impacts on the institution. Faculty go through a rigorous examination before they are given the protection of tenure, and that rigorous examination serves the institution well. The abolition of age 65 would, I think, require an assessment of the possibility of performance-related evaluations, which would take up significant time and effort of the institution and distract from its mission.

Perhaps more importantly, there could be a significant adverse impact on academic freedom. On this point, I can't make it better than Dr Mustard did. Dr Mustard, as you know, was previously an academic vice-president at McMaster University, and his concerns about performance-related evaluations were expressed as follows:

“Assessment systems tend to have a steering effect; that is, work or projects will be selected which can be counted on to be completed successfully within a period of review. The optimum cycle is between three and five years. Short-term considerations will therefore come to drive research priorities and selection and thus impair our capacity to engage in long-term basic research. Research which requires a long-term commitment or which is speculative is less likely to be undertaken. This would have a detrimental effect on the quality of scholarship and research in Canadian universities and thereby on the technological developments important to Canada's future.”

There have been, I'm sure, in the discussions that relate to mandatory retirement also discussions about the adverse impact on men and women who are reaching the end of their career and the potential less humane and perhaps less tolerable review process that may then be visited on those who do reach the end of their career. In short, the harshness of review could not only in the universities have an adverse impact on scholarship and research and therefore on academic freedom but also, as with many other places, could lead to less tolerance of those who are senior in the professoriate and



therefore interfere with the dignified exit that in fact serves an institutional purpose in some cases.

In conclusion, on behalf of the University of Toronto, I would submit to this committee with respect that mandatory retirement serves goals of the university well and ought not to be abolished. Without mandatory retirement, the university risks becoming an outdated institution of higher learning and will adversely affect the ability of the university to renew itself and to be in the forefront of intellectual innovation and to strive for fairness and equity in the workplace.

I thank you for your attention.

**The Chair:** Thank you. Questions and comments?

**Mr Charles Harnick (Willowdale):** It's interesting for me to note that almost two thirds of the people who have come before this committee in one way or another have been affiliated with universities or are affiliated with universities at the time they come here. It's interesting to note the nerve that obviously this proposal has struck within the university community.

What I wonder, and what no one has been able to really tell us, is how many professors within the University of Toronto are in fact asking to stay beyond the age of 65. What proportion of your faculty wants to stay beyond age 65?

**Mr Murray:** I don't know. I can certainly undertake to find out for you and report back if we have that statistic. At the University of Toronto some are continued on past age 65 and make an extraordinary contribution. One needs only to remember Professor Frye to be aware that this is certainly something that can happen and does happen, to the benefit of all of society in his case, as well as the University of Toronto and its students.

Whether the environment creates an expectation that requesting will in fact lead to ongoing employment is something that may determine whether people ask to be carried on or not. The only thing I can say is that I would report back to the committee if we do have a statistic and advise you how many individuals ask. My suspicion is not very many, but I don't know.

1600

**Mr Harnick:** One of the things that concerns me about this bill—whether I'm for it or against it is really quite irrelevant—is that this bill is now in committee, and I gather it's received second reading in the Legislature. Because it has proceeded via the private members' process, I have some concern that this bill may ultimately become law without too many people knowing very much about it. You notice that we have virtually no press here, and this is a pretty big issue. I don't know what the government's intentions are in terms of the passing of this legislation. Most private members' bills die after second reading. I have no idea whether this bill is just one of those that's going to slip right through without a lot of people noticing.

I have some real concerns, not so much with the substance of the issue but with the procedure this bill is taking. I don't know what the government's intentions are. I suspect that you at the University of Toronto don't know what the government's intentions are. Normally, a bill that proceeds via the public channels is a lot more up front in the mind of the public than a bill that proceeds in this manner. I wonder if you can tell

me, because I know and respect the authority with which the University of Toronto is perceived, whether you know anything about the way in which this bill is going to proceed and what caused you to be here.

**Mr Murray:** I don't know anything about the government's intention with respect to this particular bill. If anyone at the University of Toronto knows, I can assure you that they have not told me. What causes me to be here is that this private member's bill was noticed and, because of what we think is its very significant impact on the university, has resulted in us making submissions.

As you know, the universities have already been required to invest very substantial funds in this cause, if I can use that word, because of the constitutional challenge to mandatory retirement which occurred in the Ontario courts and went through the Supreme Court of Canada, where the Supreme Court of Canada said that the policies of the universities with respect to mandatory retirement were justifiable in a free and democratic society.

The articulation of the institutional perspective was made in that case and the institution, at least certainly the University of Toronto, remains dedicated to that, particularly in an environment where the university is going to be asked to respond not only to changes in society, changes in disciplines, changes in science and learning, but also is going to be asked to respond and will respond to employment equity commitments, which it has undertaken as a matter of policy and which will be reflected in statutory obligations.

We feel at the university that the potential impact of this legislation on the university is extraordinary and is detrimental to the community it serves, both the internal community it serves and also Ontario. That's why we're here.

**Mr Harnick:** In my lowly station in this place—and I tell you, it is lowly—my suggestion to you would be to speak to the president of the university, who I know is a friend of Premier Rae's. Maybe he'd better ask Premier Rae what his intentions are with this particular piece of legislation, or all of you people may be very surprised at the end of the day. This may just slip by with nobody noticing, no unions, no academic institutions or any other of our so-called stakeholders in these kinds of issues. I certainly don't know what the intention is of the government; they don't tell me those things. But if I were you, I'd be real concerned about that. Knowing your president's close relationship with the Premier, I suspect you better ask your president to get him on the telephone—because he wouldn't answer our questions in question period about this—and say: "What are your intentions about this? Are you really going to slip it by?" If you find out the answer, if you could let me know, I'd really be obliged.

**Mr Murray:** I certainly will pass your suggestion on to the president of the university. I'm not sure it would be the president's expectation that the Premier would disclose his intentions, if he knew them, to the president of the university. I'm not sure their relationship is that way at all.

I am here on behalf of the university and its president to say to the government and to this committee that we as an institution are opposed to the abolition of mandatory retirement, for the reasons we have suggested. If we were invited to comment on the larger societal issues that may have impact



on the trade union movement, on collective agreements, on pension planning, which may have a consequence for people in the workplace and may make pensions more or less available, I don't know whether the university would feel it was appropriate in the context of this committee to make those larger arguments.

But we are here to talk about the university, and if anyone wanted us to talk about the other issues on behalf of other groups, I would certainly have to take some instruction on that, because the university is not necessarily going to feel it appropriate in all cases to comment on policy objectives of government just because we're invited to do so. I don't know what the president would say to the Premier apart from asking me to come here, but I will pass that on for sure.

**Ms Jenny Carter (Peterborough):** I'd just like your opinion on two points. I think we both agree that we'd like to see more women on university faculties and more job equity in a general way. Some women and other people who become available may be what you call late starters, people who have done other things in life and then maybe got academic qualifications at a later age, so they might reach a relatively advanced age yet their qualifications would be up to date, just as those of a younger person might be. It seems hard that somebody like that should be arbitrarily chopped off at age 65 although they may not have made their full contribution. Do you have a comment on that?

**Mr Murray:** I agree. One cannot disagree with your general observation that there will be individuals at age 65 who have much to offer, for sure, whether they have been qualified recently in their lives or whether they have not. This is a tremendously variable thing.

**Ms Carter:** Another aspect of that is that somebody who started late would not have qualified for a pension, so they could be in financial hardship if they were forced to retire.

**Mr Murray:** This is absolutely true, although I think it would be a very unusual situation if a first-time employee at age 60, say, who comes to any employer may or may not have had the benefit of pension plans before. It would be unusual, I think, to conclude that the employer of the older employee can or should do anything about a lifetime with no pensionable earnings. I'm not sure that can be remedied by the employer of the day who is in fact doing something about that.

**Ms Carter:** We had a presentation from an older women's group and this was something of a great deal of concern to them.

**Mr Murray:** The university, by the way, doesn't make any distinction, as you would know, between men and women in any benefits, including the accrual of pension entitlement.

**Ms Carter:** My other point is your observations about up-to-date knowledge and so on. In scientific subjects that's indisputable, but I'm not quite so sure about some other subjects such as classics, history or literary specialties, where you might have somebody who actually might be very hard to replace.

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**Mr Murray:** Undoubtedly, you're correct on that. I think the difficulty is that one is not going to easily distinguish

between disciplines for purposes of determining a policy on mandatory retirement, but I think your point is probably a valid one.

On the other hand, there is much to be said for renewal, different perspectives, different focus on the same discipline and opening up a discipline. Aboriginal history, for example, in 1950 may receive a very different treatment by the institution than it does in 1990. Similarly, I suppose, African-American, African-Canadian history, Jewish history, a number of other things, will have changed. Even where we don't traditionally consider rapid change in terms of scholarship, if you will, there may well be very important reasons why, even with history and other subjects, we ought to be opening up departments to others who will bring different perspectives and different scholarship to a changing environment.

**Ms Carter:** I'll yield to one of my colleagues.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I have to apologize for not being here right at the beginning of your presentation, but I have appreciated the part I heard, and I'm sure I would have the rest.

I have to say, though, that this is probably the worst-kept secret that could have been put out there. More than 2,000 notices were sent to various interest groups, and it was advertised in each of the daily papers. I want to assure you that your being here and your knowing about it isn't an accident. It was deliberate, so that we could have a comment.

**Mr Murray:** No, I know I'm not here by accident.

**Ms Akande:** Yes, and I know you're not too, so we're both agreed on that.

My experience has taught me—and that's also teaching at the universities, as well as elementary and secondary school—that people most likely teach in the way in which they were taught, rather than in the ways in which they were taught to teach; which would, for me, almost contradict the argument that new blood would necessarily make for better or new perspectives in education. Would you disagree with that?

**Mr Murray:** I honestly don't know whether I'm in a position to comment on that. I don't think I would feel comfortable as a lawyer making a comment on that. It's nothing I have reflected on and certainly wouldn't have an institutional opinion on it. I'm quite happy to defer to my academic colleague if he wants to respond to that.

**Dr David Cook:** If I might just make a short comment, if you look at our women's studies program, for example, by setting up a focus on women's studies and then having positions available, which fundamentally come from retirements or vacancies in the other part of the faculty, you do bring in new blood, if you want to call it that, with a new perspective, because that's what you're advertising for. I think that's very important. The president's committee on anti-racism has noted a number of areas where the university should have a presence, a number of fields we are not doing at present. We will again try to open up those positions, which will come from the various faculties but will be brought together in a way in which a new focus will come about. So I think the new blood's quite important, and even if the teaching methods may be quite similar to what they've learned, the focus is important.

**Ms Akande:** I consider it somewhat unfortunate that we put in opposition, or at least in competition, two groups of

people, both for very good reasons, and I don't think the reasoning necessarily supports that. Let me take your example just a little bit further.

We had a presentation here just last week by the Older Women's Network, women who were well beyond the age of 65, who demonstrated a grasp and an ability to discuss women's issues that would be envied by many who are much younger, and who are graduates and who may be applying for positions in the university.

I don't necessarily see that the age of 65 is necessarily a convenience that's going to bring about the hiring of people who would have a better view or even a different view. It just means that younger people are asked to express those views rather than older ones.

**Dr Cook:** Again, if I could make a short comment, we do have many people past the age of 65 who continue to participate in our programs; they're very valuable. We indeed offer to all the retirees some privileges to stay in the university community, and from time to time we employ them for courses or specific duties. So it's not that when 65 arrives, the curtain comes down and you're severed from the relationship to the university, but the relationship changes.

I can see your point, as Ms Carter raised earlier, about the pension and the financial viability of people. On the other hand, there is still a continuing involvement for many people; where there is a financial burden, that's lessened. So fewer dollars to the individual but the opportunity for the university to renew itself.

**The Chair:** Ms Katz, Mr Murray, Mr England and Mr Cook, on behalf of this committee, I'd like to thank you for taking the time this afternoon to bring us your presentation. We'll be looking forward to your written presentation also.

**Mr Murray:** Thank you very much, and thank you to the members of the committee.

#### TRENT UNIVERSITY

**The Chair:** I'd like to call forward our next presenter from Trent University. Good afternoon. You'll be allowed up to about a half-hour for your presentation. The committee would appreciate it if you'd keep your remarks a little briefer to allow time for questions and comments from each of caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

**Mr John O. Stubbs:** Thank you, Mr Chairman. My name is John Stubbs, and I'm the president and vice-chancellor of Trent University. I'd like to thank you for the opportunity to speak to the committee.

I'd like to begin by saying that many of the things that you heard from the University of Toronto, which is of course the largest university in the system, hold true for the smallest university in the system. We'll soon be the second-smallest, when Nipissing receives its charter.

We have approximately 3,800 full-time undergraduates, 70 graduate students and about 1,800 part-time students. We have about 360 non-academic staff, 240 full-time and 70 part-time faculty. My remarks today will focus on the impact that the abolition of mandatory retirement would have on the faculty workforce at my particular institution.

The proposition I would put forward is that for faculty colleagues in the university setting, certainly in the Trent setting, mandatory retirement is not a hardship. It is the quid pro quo that has allowed us to provide a compensation system for faculty that rewards excellence and provides career incentives in an employment situation where one's duties are not expected to vary from the day a professor starts working until she or he retires. I'm talking about members of the faculty who remain for most of their career in the role of teaching and research. They may for brief periods of time assume some administrative responsibilities, but the vast bulk of their time is spent as active faculties in the creation and dissemination of knowledge.

I would suggest that for my institution, and I think for most universities in Ontario, there are a number of values of mandatory retirement. I would list six, and then I'd like to comment a bit more on some other matters.

First of all, mandatory retirement, as presently exists, allows us to employ the number of faculty we currently have. In other words, we can plan with certainty. We know where we are.

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Second, it provides us with one of the very few concrete and absolute planning tools we possess. We actually have the schedule and know when people plan to retire.

Third, it permits faculty renewal through the replacement of senior faculty with junior colleagues in an orderly and predictable fashion, and it allows for the development of new academic fields that provide great societal benefit. You've already had some discussion, and I'd like to talk a bit more about that later.

Fourth, it allows us to provide a career earnings approach to faculty compensation, and this is something that the faculty associations and the unions support.

Fifth, it provides a concrete and discernable feature around which employees can plan their lives and their careers.

Finally, as Mr Murray indicated, it enhances academic freedom and the honesty and integrity of research.

Let me say something about the current and prospective environment in the university I work for. It is clear—and this is not a partisan statement, but simply a fact—that funding has not kept pace with inflation for a number of years in the university system, so in effect our income has been declining over a period of time. Many members of the House are familiar with the data we have generated as a system.

Despite this fact, Trent University has, through careful planning, generated a great deal of momentum on a number of fronts which enjoy a high degree of societal value today. Specifically, let me instance our program in native studies, programs in environmental and resource studies and in women's studies.

One third of our current faculty have been hired since 1986, and this has only been possible through the combined effects of positions vacated by mandatory retirement, by voluntary early retirement and by the special government funding for faculty renewal which flowed from the Bovey report that the University of Toronto referenced. By offering nearly half of these appointments to women, we have been able to increase the number of women faculty at Trent by 117% in the last six years.

Currently, the government's attempts to create a secure financial planning—the 1-2-2 scenario we were promised in



January—have now failed, and the potential consequences are extremely serious. We are attempting at Trent to eliminate a deficit and at the same time to find new ways to deliver services. The one concrete thing we have left now, as we try to deal with the new financial reality, is the known pattern of faculty retirements.

In Trent's case, the numbers are very small. Between now and the end of the decade—and this is a reflection of the fact that we made a major effort to increase the number of new faculty, fully one third in the last six years—we will have 34 faculty members retiring at the age of 65 between now and the year 2000. With these 34 positions, we will first of all reduce our base budget by replacing about only half of those individuals who retire; we will rationalize our academic programs by building on our strengths; we will continue to address the various employment equity and other equity agendas; and we will bring fresh, new individuals, who we need to keep us at the leading edge of research and teaching.

If mandatory retirement were abolished through Bill 15 as proposed, what would happen? The evolution of mandatory retirement in this current difficult period of financial restraint would introduce massive uncertainty in our academic and human resource planning and practices. We are a small institution: There are not four of us sitting here making the presentation; there is one person. We don't have the resources. We are very pressed to undertake our fundamental mission.

The current three-year fiscal restraint plan, which we developed at great cost last year through a very wide consultative process, would be abandoned. If mandatory retirement were abolished, we would have to think very hard about the fiscal plan we've developed over the last year, and much of the momentum that we've gained through the new appointments which we have been able to make over the last six or seven years would be slowed down, as hiring would have to be frozen or close to frozen.

Many of our programs are very small—we have 26 academic programs at the university—and the loss of even one faculty member would have a serious impact on quality if we did not have the planned certainty of retirement. When we can plan, we can anticipate these particular situations. If we were not able to plan because people might be able to stay to the age of 71, the uncertainty would be very difficult in a number of small academic units.

We would also have to think very carefully about the concept of career earnings approach to faculty compensation. That could have the potential of breaking faith with those who are currently in midcareer, who are counting on higher salaries later in their working lives to compensate for the lower salaries they receive in the early years of employment.

I would suggest that there will also be considerable unrest within the faculty associations and unions in the university sector as we try to figure out new ways to compensate faculty and assess performance. I won't repeat what the University of Toronto said about assessment in the later stages of a faculty member's career, but I do think there would be very serious difficulties in that way.

There is no guarantee that we can find a new or affordable way to compensate and assess faculty which will provide the kind of protection around academic freedom that currently

gives society the benefit of research that might take years of work before quantifiable results materialize.

While we are sure that the proponents of Bill 15 are well motivated, it must be understood what the spinoff effects of the abolition of mandatory retirement would be, not only for the few who may enjoy a short elongation of their careers once legislation has been enacted but by all the colleagues who are currently employed in the universities and all those who hope to follow in our sector. In my view, the results, particularly in the current dismal financial climate, would be extremely negative and therefore very unproductive for Trent University and for the university sector as a whole. Thank you.

**The Chair:** Thank you. Questions and comments?

**Mr David Winninger (London South):** Thank you for sharing your thoughts with us today. My question has a couple of parts to it. First of all, you're aware, Professor Stubbs, that several other provinces and territories have already made the kind of amendment I'm seeking through my private member's bill.

**Mr Stubbs:** Yes, I understand.

**Mr Winninger:** So the first question is, why would Ontario differ in its ability to plan from the other provinces and territories that have already implemented the kind of change that my bill would seek?

Second, I have some difficulty with the notion of tying employment equity initiatives to mandatory retirement. In those jurisdictions where the age has been lifted, 1% to 2% on average of all people who reach the age of 65 choose to stay on, and some of our US data indicate that of the 1% to 2% who stay on, nine out of 10 of those individuals are gone by the age of 67. I know the number who choose to stay on is a little higher in terms of academic appointments. We had some Manitoba data, I recall, presented by the Council of Ontario Universities, indicating 4%, if my memory serves me correctly.

If 96% of academics choose to retire at the age of 65, and the 96% of academics were replaced by employment equity target group members, surely your figures for increasing employment equity would be in the thousands of percentages rather than in the hundreds. I have a great deal of difficulty justifying in my own mind how women and the other target groups would be held back simply because 1% to 2% or even 4% of academics choose to avail themselves of employment beyond age 65.

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**Mr Stubbs:** I understand very much the drift of your question and what you're trying to suggest. But let me suggest that in a very small institution, if 4% decided not to retire, that would eliminate the potential for hiring. I think it's extremely important to understand the very narrow line that universities are walking down now at the present time. I'm not here to debate the funding scenario, but we are in a very difficult position.

For example, with the 34 faculty who are scheduled to retire at Trent, if some percentage of those individuals decide not to retire and choose to stay on, as I know is the case in Manitoba, to the age of 71—it seems that some federal constraints kick in at that particular point—that's six years.

Even if it's a relatively small number of people who stay for an additional six years or potentially up to six years, that really does, in our case, eliminate a tremendous potential that we do have now for very much hiring. It really does circumscribe that quite dramatically.

We're not talking about an institution that has a huge turnover at any one point in time. It's a very small turnover, and there is a kind of certainty now in the situation that I think is accepted by most members of our community.

As Mr Murray and Dr Cook indicated in the case of the University of Toronto, in a number of cases at Trent we have rehired individuals, after they've retired, to teach individual courses, which is often very much what they want to do: They would like to teach one course or they would like to be involved in one research project; in fact, we facilitate continued involvement in research projects.

**Mr Winner:** But this bill would not take away that opportunity in any way. Your figure is 34 people who will retire in this year—

**Mr Stubbs:** No, no, in the next eight years.

**Mr Winner:** So 34 people retiring over eight years, and if 4% decided to stay on, that's one or two professors out of 34 people. Surely that's a very marginal effect.

**Mr Stubbs:** With respect, I don't think the data show that. I don't think the Manitoba data show that at all. I think it shows a significant number of individuals who reach 65 and then stay. And when many individuals take early retirement—we have an excellent early retirement program at Trent—if people choose, they tend to choose that at 62, 63, 64. It seems to me that the data in the COU report, with respect, for both Manitoba and York say there is a considerable amount of uncertainty if people stay past 65. My point is that we don't have the flexibility at present to plan in that kind of situation with the present funding we have. That's where I would rest my argument. Certainly personal conversation with individuals at the University of Manitoba would suggest that in some cases a very difficult situation arises.

**Mr Winner:** I think I understand your position. I may not agree with it.

**The Chair:** Thank you, Mr Winner. Ms Akande.

**Ms Akande:** Thank you; I didn't think I'd have an opportunity. How much in advance of their retirement are you notified by those who wish to retire early?

**Mr Stubbs:** The faculty early retirement program was bargained collectively. Faculty can signal their interest in early retirement, I believe, in their 59th year, and then there is a window each year where they advise the provost's office that they're interested in taking it up in the following period. They can also take partial early retirement through that process.

**Ms Akande:** So it can be as little as a year in advance. You don't really need to be way down the road before this decision is made and the university—

**Mr Stubbs:** I think I'm right, but I may be wrong; it may be 18 months. But it's 12 to 18 months.

**Ms Akande:** Because in a lot of those collection of data, one of the things that seems to be true is that it balances out. As a matter of fact, it often balances in favour of early

retirements, which would give the university greater leeway in implementing the new programs you've referred to.

I did want to mention one thing, and I'd really appreciate understanding this better. With the new programs that are very important to be presented now that weren't presented in the past—native studies, women's studies, African history, environmental studies, all of these—when you mention those particular courses, within your planning and within the numbers you know you'll have and the budget you'll have, do you then decide how many of which courses you will need to accommodate the numbers of students you have? You have to do some kinds of projections, is that right?

**Mr Stubbs:** Yes, we do.

**Ms Akande:** When you're doing that, does it ever occur that there are courses that have been offered traditionally that seem now, in the numbers they're offered, redundant?

**Mr Stubbs:** Yes.

**Ms Akande:** What is done with those people who teach them?

**Mr Stubbs:** Nothing's done with the people. The courses are dropped and faculty take on new responsibilities.

**Ms Akande:** In the new courses?

**Mr Stubbs:** It depends on the area. It depends on whether people can move into new disciplines. Even in a small university like Trent, where the smallest academic unit is four—we feel a minimum of four faculty are needed to offer an honours or general three- or four-year program—in many of those cases when courses disappear, faculty would pick up new courses.

Of course, faculty—I want to be clear about this—are creative people. I know where we're going on this question, but faculty are continually bringing new courses on stream. It is often a faculty member who will begin to lead the university in new directions. Native studies is a perfect illustration of that, and so is women's studies.

**Ms Akande:** Yes, I know. So sometimes it is an older professor who begins a new course.

**Mr Stubbs:** On occasion, but it is equally the case that we will hire—I want to get this point back—a young faculty member into a "traditional" department and that person will lead the breakthrough into a new area. Women's studies is a perfect illustration of that; that's how it came about at Trent.

**Ms Akande:** I appreciate your position. I just don't agree.

**The Chair:** Thank you, Ms Akande. Mr O'Connor.

**Mr Larry O'Connor (Durham-York):** Just a short question. Tomorrow the committee is going to be hearing from the Ontario Federation of University Faculty Associations. In preparation for coming here today, did you happen to have some discussion with your faculty? What might have been their opinion on this issue?

**Mr Stubbs:** I'll be very honest with you. Despite the notification that Ms Akande drew to our attention, I only became aware of this when the Council of Ontario Universities advised that hearings were being held. We contacted Ms Freedman and this was the only slot available, so I have not had time to consult with the faculty association. I would imagine, knowing our faculty association, that there would be a wide



range of views on this matter within the association. That would be my guess.

**The Chair:** Thank you, Mr O'Connor. Mr Stubbs, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and bringing us your presentation. Thank you very much.

**Mr Stubbs:** Thank you. Could I add just one item? There was a question about York, and Mr Murray, who is also legal counsel at our university on some items, has advised

that at York, when it introduced flexible retirement, no employed faculty member went on early retirement; they all stayed. So the initial York experience suggested that they were going to continue.

**The Chair:** On behalf of the committee, thank you very much for that piece of information. Seeing no further business before this committee this afternoon, the committee stands adjourned until 3:30 tomorrow afternoon.

The committee adjourned at 1640.

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Second session, 35th Parliament

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Tuesday 8 December 1992

### Standing committee on administration of justice

Human Rights Code  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mardi 8 décembre 1992

### Comité permanent de l'administration de la justice

Loi de 1992 modifiant le Code  
des droits de la personne

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Tuesday 8 December 1992**

The committee met at 1546 in room 228.

### HUMAN RIGHTS CODE AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

Consideration of Bill 15, An Act to amend the Human Rights Code / Loi modifiant le Code des droits de la personne.

### ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. We'll be resuming our public hearings on Bill 15, An Act to amend the Human Rights Code. For the committee members' information, the rest of today's schedule is on the back. We'll have three presenters today.

I'd like to welcome our first presenters, from the Ontario Confederation of University Faculty Associations. Good afternoon. Just as a reminder, you'll be allowed up to 45 minutes for your presentation. The committee would appreciate it if you'd keep your comments a little brief to allow questions and comments from each of the parties. As soon as you're comfortable, please identify yourself for the record and then proceed.

**Ms Marion Perrin:** Certainly. My name is Marion Perrin. I'm the executive director of OCUFA. With me are Debra Flynn, an executive member of OCUFA and faculty member from Nipissing, and Don Savage, the executive director of the Canadian Association of University Teachers.

We welcome the opportunity to appear before the committee today. I will address the committee, and then Don Savage will also make some comments. I'll attempt not to read the entire paper we presented you with. However, I will obviously lead you through parts that we feel are most important.

We support the proposed amendment to the Ontario Human Rights Code. The amendment would remove long-standing and systemic discrimination against all Ontario workers once they turn age 65, as the definition of "age" now allows in the code. To paraphrase one of the professors who challenged mandatory retirement in the Supreme Court of Canada, it makes no more sense to force workers to retire because they are age 65 than because they are 6 foot 5.

The legal effect of the amendment would be to grant individuals 65 and over the right to file a complaint about any and all forms of age-based employment discrimination. While we intend to limit our comments to issues surrounding mandatory retirement, it should be noted that under the current definition of "age," employees over 65 are now prohibited from complaining about any employment term or policy which discriminates on the basis of age, whether it be age-based reduction in hours of work or wages, age-based denials of

performance appraisals, promotions, vacation opportunities etc. People over 65 do not have any employment-related protection under the code.

To put it another way, section 10(1) does not just permit mandatory retirement, but it also effectively permits all forms of age-based employment discrimination against people over the age of 65 who are still employed. OCUFA and CAUT are of the view that this is completely unacceptable and in itself requires that section 10(1) of the code be amended as proposed in Bill 15.

Although we welcome the effect of this amendment, it should be no surprise that our primary interest in supporting the amendment is that an amended Human Rights Code would enable university professors to bring a complaint to the Ontario Human Rights Commission that they have been discriminated against on account of age as a result of their forced retirement.

OCUFA and CAUT supported seven university professors and a university librarian in their challenge to mandatory retirement policies in Ontario universities as a breach of the Canadian Charter of Rights and Freedoms. We supported that through to the Supreme Court of Canada in a case known as McKinney, where the challenge to mandatory retirement was defeated by a majority of the court. But we will speak to that later in our discussion with you today.

In many jurisdictions across Canada, mandatory retirement is no longer permitted. Mandatory retirement has been abolished in Quebec and Manitoba, for example. In Manitoba's approximately 12 years of experience, there have been no significant complaints from university administrators. In other jurisdictions, individuals at least have the right to complain about age discrimination under human rights legislation.

In the United States, mandatory retirement has been abolished for most workers. Since 1986, general federal law has prohibited mandatory retirement. A permissive exception allowing mandatory retirement at age 70 for fire, police workers and tenured faculty expires on December 31, 1993.

The US Equal Employment Opportunity Commission report to Congress has recommended that the exception for faculty not be extended beyond 1993, and Congress will likely agree. The report concludes that the various adverse consequences of abolishing mandatory retirement of university faculty, as predicted by universities, have been significantly overstated, have little, if any, empirical basis and have not taken place in those universities where mandatory retirement of university faculty has been eliminated. In the intervening period, some states have lifted the permissive exception and some individual institutions have voluntarily ceased requiring faculty retirement by the age of 70 years. Currently, at least 15% of US universities do not forcibly retire their faculty.

CAUT and OCUFA stand solidly in support of the proposition that workers, including university faculty and librarians,

will continue to be capable of performing their duties and responsibilities and should not be forced to retire from the workplace at the arbitrary age of 65. We believe workers should retire when they choose voluntarily to do so. We believe just cause provisions in collective agreements as well as the reasonable and bona fide occupational qualification provision in the Ontario Human Rights Code provide more than sufficient protection to ensure that non-productive workers can be dismissed where this is warranted.

We wish to emphasize two particular aspects of mandatory retirement which we find particularly offensive. First, it is our view that mandatory retirement is simply unjustifiable discrimination on the basis of age. Secondly, we will discuss how mandatory retirement has a disproportionately harsh financial, psychological and emotional impact on women workers, perpetuating beyond their work life and into retirement the income disparities and wealth gaps that exist between men and women workers.

The current definition of "age" removes protection from age-based employment discrimination from those over 65, depriving individuals of the equal benefit and protection of legislation which is universally regarded as being of fundamental importance to Canadians. Human rights legislation is intended to protect and enhance human dignity, promote equal opportunity and encourage and ensure the development of human potential based upon individual ability.

By permitting mandatory retirement and discrimination against individuals over 65, the code itself encourages, recognizes and institutionalizes discrimination. The Supreme Court of Canada, in *O'Malley versus Simpsons-Sears*, stated that if the effect of a rule or provision is to "impose on one person or group of persons obligations, penalties or restrictive conditions not imposed on other persons of the community, it is discriminatory." The age of 65 in the code in section 10(1) is *per se* discrimination.

The effect of mandatory retirement is to arbitrarily remove an individual from his or her active work life regardless of his or her actual mental and physical capacity. Mandatory retirement not only causes loss of income, but also deprives individuals of the continued opportunity to work, which for many individuals provides a symbol of worth and achievement and a source of social status and prestige in a meaningful social context.

Mandatory retirement also reinforces the societal perception that the old are and should be less than full and equal participants in society. This perception often rests on negative stereotypes concerning older people in society as playing a decreasingly active role in life and as having failing mental and physical powers.

The prohibition against filing a complaint of discrimination based on age, simply because the person is over 65, permits employers to implement workplace rules which require retirement on the basis of age. These rules completely ignore actual abilities and desires of the individuals to whom they are applied. They perpetuate negative stereotypes.

At the bottom of page 7 is a passage from our academic literature which in part states: "Research evidence comparing the actual performance of younger and older workers shows quite consistently that job-related stereotypes are not valid.

Individual differences within each age category overshadow performance differences attributable to age."

With respect to university faculty, there is simply no evidence that the quality of research or teaching deteriorates at age 65 or even reasonably thereafter. Many faculty over 65 continue to make valuable contributions to the university community. Even in Ontario, it is routine practice, in every university, to make post-retirement appointments for a number of faculty who have reached the age of 65. True, universities save money by forcing these older faculty to retire and then having them teach the same course at a much reduced salary without any protection, but this can hardly be considered fair or justified.

Another purported justification for mandatory retirement is the creation of job opportunities for younger people. It is true that unemployment is a current and significant economic problem. However, we have seen no evidence which would indicate that the unemployment rate would be significantly affected by the abolition of mandatory retirement.

Evidence led by the universities in the mandatory retirement case described concerns respecting youth unemployment as a misplaced priority. University of Toronto economics professor James Pesando, testifying in support of the universities and the government of the day in defending mandatory retirement, stated in affidavit evidence that the argument that any compulsory retirement would reduce the job opportunities available in the labour force is not substantiated by economic analysis, and should not be accorded the central role in the debate which it now enjoys.

It is certainly far from clear that there is any direct relationship between the retirement of senior faculty and the hiring of junior faculty. The abolition of mandatory retirement would have a short-term temporary and limited effect on the hiring of new faculty. Even the council of universities has recognized that it is unlikely that substantial numbers of faculty will continue full-time employment after age 70 even if mandatory retirement by reason of age is abolished.

Evidence in the United States and Canadian jurisdictions where mandatory retirement has been abolished shows that the effect of the abolition of mandatory retirement has been minimal, particularly when viewed against the trend in universities towards early retirement.

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Many mechanisms which do not require mandatory retirement are available to facilitate faculty renewal. Mechanisms include the encouragement of the existing trend towards early retirement, one-time early retirement incentives, reduced workload with tenure, work sharing, phased retirement, career change options. Research demonstrates that properly designed and implemented flexible retirement and career change options provide universities with a successful method of encouraging faculty renewal.

It is completely unacceptable to attempt to create employment opportunities for the young at the exclusive expense of older workers. Young workers and particularly young faculty do not constitute a disadvantaged group within the meaning of provincial human rights legislation or indeed within the meaning of the Charter of Rights and Freedoms. An objective of attempting to create new employment opportunities for younger workers by simply requiring older workers to exit



from the workplace is itself inherently discriminatory and inconsistent with the values and principles essential to a free and democratic society.

I draw your attention to the section of the McKinney case quoted on page 11 from the dissenting judgement of Madam Justice L'Heureux-Dubé. She states:

"The adverse effects of mandatory retirement are most painfully felt by the poor. The elderly often face staggering financial difficulties; indexed pensions have not kept pace with inflation, and a dollar saved at an earlier time in anticipation of retirement buys only pennies worth of goods today.... The median income of those over 65 is less than half the median income of average Canadians, and there is a wide disparity among these individuals, many of whom have no, or very small, private pension incomes."

A primary consideration in making the choice to work after age 65 would be income security. As the special Senate committee on retirement policies has observed, there is no doubt that the private pension plan system is flawed with the result that the retirement income from private pensions is grossly deficient for many elderly retired people.

Finally, we wish to deal with one additional concern with respect to the continuation of mandatory retirement in the universities. The present system of tenure, supported by procedures to ensure that tenured faculty members are not dismissed except for just cause, has always been recognized as a minimum right which faculty members must enjoy in order that academic freedom can flourish and that intellectual and academic endeavours can be pursued in a climate free of fear from sanction for unpopular views or opinions.

In our view, the institutionalization of a system, perpetuated, sanctioned, and encouraged by the current definition of age in the code, where there is an opportunity to discriminate against faculty members over age 65 is simply incompatible with academic freedom.

Faculty members do teach in Ontario universities beyond age 65; however, many do so without any rights whatsoever, without tenure, without the protection of collective agreements and without the protection of human rights legislation. It is necessary for the definition of age to be amended so as to bring those faculty members, and other faculty members who would like to teach beyond 65, within the scope of the protection of the code so that academic freedom can be a meaningful right for all professors regardless of age.

Some university administrators have suggested that if mandatory retirement is ended, tenure would be threatened. OCUFA and CAUT reject that argument. Their argument stems from the same negative stereotypes discussed earlier. There is no empirical evidence to support these stereotypes. Moreover, tenure is intended to protect academic freedom. It does not exist to protect incompetent or unproductive faculty, whatever their age. Adequate mechanisms are already available to deal with unproductive faculty. Mandatory retirement is not necessary for this purpose and is much too crude a tool to use for that purpose.

The real-life experience of universities in Canada and the US which no longer have mandatory retirement runs directly against the notion that somehow tenure would be threatened if mandatory retirement were abolished.

In the McKinney case, both Madam Justice Wilson and Madam Justice L'Heureux-Dubé—the only two women sitting on the appeal—recognized the disparate and discriminatory impact that mandatory retirement has on women workers. Madam Justice Wilson stated:

"It is clear that a great many workers in the province of Ontario are not fortunate enough to be members of private pension schemes. The evidence has established that there is a very high correlation between the existence of such pension plans and unionization. But the statistics show that the vast proportion of the workforce is unorganized. The preservation of pension has therefore very little relevance in the case of the majority of working people in Ontario.

"This problem is exacerbated when the demographics of this portion of the workforce is examined. Immigrant and female labour and the unskilled comprise a disproportionately high percentage of unorganized workers. This group represents the most vulnerable employees. They are the ones who, if forced to retire at 65, will be the hardest hit by the lack of legislative protection.

"The statistics show that women workers generally are unable to amass adequate pension earnings during their working years. Thus the imposition of mandatory retirement raises not only issues of age discrimination, but also may implicate other section 15 rights as well."

There is more quotation from the case, and it ends: "Furthermore, women are prone to have lower lifetime earnings upon which pension benefits are based."

It is now recognized in Canadian law that employment practices may not impose disadvantages upon employees because of their race, sex or age, either directly or indirectly. Mr Justice McIntyre in *O'Malley v Simpsons-Sears* clearly made that a fact of life. He explained in his decision what adverse effect discrimination meant:

"There is the concept of adverse effect discrimination. It arises where an employer, for genuine business reasons, adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic obligations, penalties or restrictive conditions not imposed on other members of the workforce.... An employment rule honestly made...equally applicable to all...may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply."

Mandatory retirement has an adverse impact on women because it exacerbates an already very serious problem for elderly women, namely their inability to support themselves and maintain an adequate standard of living. Women are much more likely than men to be poor in their old age. In 1988, the National Council of Welfare reported that almost 72% of all elderly poor were women and concluded that "poverty in old age is largely a woman's problem, and is becoming more so every year."

The poverty of older women and the corresponding need for women to have the opportunity to continue to work beyond age 65 is attributable to a number of factors.

The first reason we outline is the wage rates that are essentially paid to women when they are in the workforce. The second reason of course refers to career patterns and



work histories, which differ from those of men. The third reason is that the entitlement of women to both public and private pensions tends to be lower because benefits are directly tied to wage levels and indirectly tied to work histories.

The participation rate of women in the workforce increased from 23% to 63% between 1951 and 1981, but the average wage paid to women still continues to be only 60% of the average paid to men. In addition, 71% of all part-time work is performed by women. Part-time workers are particularly ghettoized, lower-paid and have less chance of improving their position than full-time women workers. This disparity in wages and annual income paid to working women translates directly into an inability to accumulate savings for themselves in their later years.

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A report entitled *Sixty-Five and Older* states that women "will frequently be forced to find work in the service industries or low-paying jobs in small business which have no private pension plans.... many women are required to find work that is compatible with their child care duties and homemaking obligations, in general precluding jobs that require travel, or long or irregular hours."

This work history coupled with lower wages frequently results in many women being retired without any private pension plan or with benefits totally inadequate to replace their previous employment income.

In *Retirement Without Tears*, the special Senate committee on retirement age policies concluded that the situation for elderly women is "especially dismal." A quotation from their report is for your review.

According to the Statistics Canada publication in 1982, while 46.8% of all employed paid workers were covered by private pension plans, only 36.5% of the female workforce were covered by those plans. In addition, because of work patterns, portability and vesting requirements can substantially diminish the pension eligibility of many women.

It is the inadequacy of pension coverage and benefits that makes the elimination of mandatory retirement so important to improving the economic situation of older workers, particularly women.

In summary, the current failure to protect employees from age discrimination in employment once they turn 65 has a serious and systemic discriminatory impact on many women in Ontario's workforce. To leave section 10(1) in place is to condone the unacceptable conditions facing women which, while certainly not caused by mandatory retirement, are perpetuated by it.

In conclusion, it's the view of CAUT and of OCUFA that Bill 15 should be supported by this committee and should be passed by the Ontario Legislature.

It is true that the majority of judges on the Supreme Court of Canada ruled in the *McKinney* case that although it is discriminatory, the failure to protect employees age 65 and over under the Human Rights Code was justified as a reasonable limit. However, the majority of the court emphasized that their decision was based in large measure on deference to the Legislature. Indeed, the majority concluded its decision with the following passage:

"The Charter...left the task of regulating and advancing the cause of human rights in the private sector [under the

Human Rights Code] to the legislative branch. This invites a measure of deference for legislative choice.... [G]enerally, the courts should not lightly use the charter to second guess legislative judgement as to just how quickly it should proceed in moving towards the ideal of equality. The courts should adopt a stance that encourages legislative advances in the protection of human rights. Some of the steps adopted may well fall short of perfection, but as earlier mentioned, the recognition of human rights emerges slowly out of the human condition, and short or incremental steps may at times be a harbinger of a developing right, a further step in the long journey towards full and ungrudging recognition of the dignity of the human person."

While the court was unable or unwilling to recognize on its own the dignity of workers aged 65 and over, it explicitly left that task to the Legislature. Based on the considerations put forward in this brief and the positive experience of other jurisdictions—and even of many employers in Ontario—where mandatory retirement is neither imposed nor permitted, it is time for the Ontario Legislature to take one more "step in the long journey" and repeal and amend section 10(1) as proposed in bill 15.

**Dr Don Savage:** I would like to speak very briefly in support of what Marion Perrin has said. The Canadian Association of University Teachers has been on the record as being opposed to mandatory retirement for a considerable period of time, and we testified to the commission chaired by Senator Croll at the beginning of the 1980s. We, with OCUFA, joined in the litigation before the Supreme Court, and we have not changed our view since then that mandatory retirement should be abolished in general and in particular for university faculty.

One of the things I find most striking is the resistance by those who take the other side to the experience of those jurisdictions where mandatory retirement has already been abolished, either by legislative action or by judicial decision. Marion Perrin has indicated some of those to you, how the changes are taking place in the United States and how the province of Quebec, for instance, has abolished mandatory retirement, and by judicial decision the same thing has occurred in Manitoba.

I'd like to focus for a moment on Manitoba and the University of Manitoba. The experience of the University of Manitoba now ranges over some 12 years in relation to this issue of mandatory retirement. The administrators of the University of Manitoba are on the record on a number of occasions in a number of public fora as saying that there has been no appreciable difficulty for the University of Manitoba as a consequence of the abolition of mandatory retirement in that province.

When we appeared before the Supreme Court, at that time, approximately three times as many faculty members retired before 65 as stayed on afterwards. Those who stayed on afterwards largely stayed on for three, maybe four years, to complete the work they were doing, and very few stayed on beyond that.

The situation in Manitoba has not changed since then. The administrators have not indicated in any public fora that matters have changed. The data relating to faculty have not changed substantially since then. The testimony of that 12 years seems to us to indicate quite clearly that the objections



to the abolition of mandatory retirement in the university system are simply overblown and overdrawn.

I don't think it can be argued that there have been any significant steps taken by universities in Quebec, or in Prince Edward Island, for that matter—mandatory retirement does not exist at the University of Prince Edward Island—to attempt to reverse the decisions of courts or legislatures, as the case might be.

So we find it puzzling that the testimony of history is not in fact a testimony which our opponents seem willing to test, to look at and to learn from. That is why CAUT is quite happy to join with OCUFA in making this presentation to you, and we'd both be happy to answer any questions you might have.

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**The Chair:** Thank you very much. Questions and comments?

**Mr Drummond White (Durham Centre):** Ms Perrin, you made a number of arguments in regard to women's position, which I think my colleague has put very forcefully. What is the proportion of males to females among your groups, in OCUFA or CAUT? Perhaps you can answer as well, sir.

**Ms Perrin:** The proportion of women faculty—and when I talk about women faculty and men faculty in terms of percentages, what I want you to know is I'm talking about tenure stream or tenured professors. I'm not talking about sessionals; I'm not talking about part-timers. I'm talking about those full-timers. It's generally 17% to 19% women faculty and the remaining are male faculty.

**Mr White:** So a fairly small proportion of women on faculty?

**Ms Perrin:** Yes, it is. It has improved and it is improving slowly, and we hope it will continue to improve.

**Mr White:** Too slowly. For those folks who have reached the age of 65, are there barriers to them working on a part-time or sessional basis?

**Ms Perrin:** No, there's no barrier to them working on a part-time and sessional basis, and they get paid at least—at least—20% to 25% as much as they made the previous year for the same amount of work.

**Dr Savage:** Could I also respond? There's no legal barrier to a university offering faculty members over 65 these kinds of appointments, but it is of course by grace and favour, and if one of the purposes of universities is to produce a critical approach both to society and indeed to the universities themselves, surely it is those people who express that criticism who are least likely to receive the grace and favour of the administration in these regards, right? That's why we think it should be right and not something that is a privilege granted by the management of a university.

**Mr White:** I appreciate that. What I'm wondering about further, though, is that when you mention that 20% difference, I know that exists as well for part-timers at colleges of applied arts and technology, and there's quite a movement afoot among their faculty and their union, I think OPSEU, to have equivalent wages. Have either of your associations dealt with that?

**Ms Perrin:** It goes beyond the part-time issue as to whether or not the part-timers become an organized group. First of all, a lot of people are only there on a one-year or a two-year sessional contract, but when I said a 20% difference, what I said was in relationship to a university offering a position to a retiree at 20% or 25% of what they would have made the previous year: a difference of 75% approximately for the same workload in a succeeding year. But then a woman might not be offered that position, might not be offered that workload for a year. And women in the university sector have a very dramatically different career pattern than do male professors. There have been longer periods of time for them, perhaps, to get their PhDs, for various circumstances involving family or return-to-work situations.

**Dr Savage:** Most universities, for instance, have negotiated in their collective agreements reasonable provisions for maternity leave, but those provisions are not something which are extended to the whole population in as generous a way. It seems to me that when people take leave or are required to take leave for purposes of family arrangements and then come back to the workforce, clearly their pension arrangements are going to be affected by that. They clearly wish, therefore, to be able to work longer to make up that difference. So that's one of the ways in which women are discriminated against by the current arrangements, because they don't have the right to stay on and they can only stay on by favour.

**Mr White:** Thank you very much. A very articulate presentation. Thank you for that.

**Ms Jenny Carter (Peterborough):** I'd like to thank you for your very complete presentation. I thought I'd just try out on you one or two of the arguments that we got from the other side and see what you make of them.

One was that people's knowledge gets out of date as they get older, and in this high-tech world you must have the most up-to-date person to teach a given subject.

Another one was that, these being the times they are, some universities are quite badly underfunded and administrations are having to scrimp and scrape and do whatever they can to get costs down. This means they need to be able to plan, and if they know when people are going to retire, they can plan. Also, of course, it does mean that more highly paid people are replaced by less highly paid people and in some cases the tenured jobs are not replaced, and the kind of substandard payment you were suggesting some retirees get actually falls to the lot of younger people coming in who have just sessional and part-time appointments and don't get the full salary. Could I have your comments on those points?

**Dr Debra Flynn:** Perhaps I'll address your first comment about outdated knowledge. I think that is feeding into the stereotypes of what happens to an older professor. Indeed, teaching is part of our job, but certainly another part of the teaching profession is to make certain that you are not out of date and that you do keep up with the literature, and that is extremely time-consuming in my experience and the experience of my colleagues. So I don't believe that is necessarily the case.

I'd also like to address the issue of intellectual decline into old age. That is another myth. It's a stereotype we have

had for many years. It was primarily the result of a tremendous bout of bad research done in the 1940s and 1950s, from cross-sectional studies that indeed didn't look at what happened to an individual mentally over a long period of time.

Now, in the 1980s and 1990s, after doing a tremendously large number of longitudinal studies, what we do know about intellectual decline is that it doesn't necessarily happen and, as a matter of fact, it usually only occurs in cases of illness. Indeed, there is a tremendous amount of evidence to indicate that there are forms of intelligence that actually increase as an individual ages; of course that is intelligence that is directly related to an accumulation of knowledge over a long period of time. So I would like to make that clear from the psychological literature at the outset.

This is not part of your question, but I would also like to mention something that nobody has touched on today, that is, the psychological stress that occurs for the elderly as a result of financial constraints. Indeed, there's a whole body of literature to indicate that that type of stress actually feeds into physical illnesses. So if you are looking towards keeping the elderly healthy physically, maybe one way of doing that is to enable them to live a stress-free life.

The second part?

**Ms Perrin:** It was about the underfunding and cost reduction.

**Dr Savage:** There's an interesting parallel with the 1930s, it seems to me. The universities are saying to you today that they want to finance themselves on the backs of their older professors. In the 1930s, the universities decided they would finance themselves on the backs of women. If you'll look at the figures for women faculty in Canada you'll see they went up fairly considerably in the 1920s and then went down dramatically in the 1930s. The universities said they would get rid of married women, then they would get rid of all women, and that this was the way in which they would solve their problems.

It seems to me that university administrators should lift their eyes a little bit above their own accounts and look at the social consequences of the actions they are taking. The social consequences of the actions taken in the 1930s lived with us for a very long time after that, long after the Depression had disappeared. It reinforced all kinds of stereotypes against women workers. It seems to me the universities should not have been in the business of doing it then and they should not be in the business of doing it now in relation to older workers.

1630

**Mr David Winninger (London South):** I'd like to thank you all for your well-thought-out, well-prepared and cogent presentation.

I'm going to be quite practical. The Ontario Federation of Labour, an organization for which I have immense respect, takes an opposite point of view to yours in connection with this legislation. Their concern is that the issue of mandatory retirement should be addressed through the collective bargaining process, that this kind of initiative might erode certain public and private pension rights, early retirement options, increased social security and so on, if I understand their position correctly, and that it might encourage employers, if we removed the mandatory retirement age, to terminate employees early, that

is, before the age of 65, and to document a case of just cause for doing so.

I'd like to put this question to you. You represent faculty associations, you represent university teachers, you have an association, in my view, analogous to labour organizations. It might not be as well developed or well entrenched or whatever, but you do have an organization representing workers, albeit university professors. I wonder what kind of communication you have with the Ontario Federation of Labour that might bring your positions a little closer together, because if university professors are workers too, the difference being that they might perform mental work compared to physical work in some cases, why is there not more solidarity between the university teachers and workers in the industrial sector? It may seem a little rhetorical, but it has to be answered.

**Ms Perrin:** There is a great deal of solidarity between our organizations. We have actually had this very discussion about the difference in our views; we had it at an open board meeting.

One of the prime differences between the groups represented by the OFL and our groups is that our people generally like their work. They really generally love teaching, they love research, they enjoy their work. For a lot of the people represented in the OFL, they don't; they want to be able to retire at age 65 or sooner. And the answer to protecting the pension rights that those people have bargained for and have presently got is to ensure that they have the usual language that says that retirement will be, generally speaking, at the age of 65, and also to develop, as they have in industry in several places, early retirement schemes. They have those in place, and they believe that by not having a certain age at which people have to retire, those will be eroded. I don't see that.

There's a flaw in their argument too because of the number of people in our society who are not unionized, who do not have access to a negotiating stance with an employer for a pension, never mind mandatory retirement, a much larger majority in our society than people who actually have pension plans because they are fortunate enough perhaps to be organized.

I'm going to ask Don if he'd like to add something.

**Dr Savage:** I think you're quite right: It is unfortunate that there is this division of opinion. And I agree with Marion Perrin's view about the question of pension plans themselves. It is indeed one of the things the university president said too, that pension plans would be deleteriously affected. Yet in the case of the University of Manitoba, that is not the case. In fact, the effect has been to improve the pension plan, because the arrangements are that the people who stay on, for a period of time at any rate, continue to contribute to the pension fund; therefore, the pension fund is that much richer. And of course, some of them who are staying on don't in the end draw anything, right? They just contribute.

Our experience, at any rate, is that the concern about the proposed legislation undermining pension plans is simply not well founded, and we've never seen any research that would convince us of that.

I think we would agree with the labour movement that there is a better way of doing it than abolishing mandatory retirement. It's been suggested by a number of Canadian unions, CUPE, for instance, that the true solution is to have a



guaranteed annual wage at a reasonable level, and then only those people who really wanted to stay on beyond 65 would have any motivation to do so. But the plain fact of the matter is that we've had a government in power in Ottawa for the past eight years that is not interested and has done nothing about it.

So from the point of view of our members, we feel that where action can be taken to solve the problem, something should be done. But we would be more than delighted to join with the Canadian Labour Congress and anybody else in bringing about a guaranteed national annual income system for this country.

**The Chair:** One final question. Ms Akande.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Thank you for your presentation. One of the ways in which the question of retirement and pensions has been addressed in many articles is in discussions of career earnings. If you're looking at career earnings and you're also wanting to respond to the concern that's been expressed by labour, one of the things you have to go to, naturally, is evaluation, good evaluation, not just at 65 but all the way through. How would you respond to that? Has any thought been given to career earnings instead of the mandatory 65? I'm very much in agreement with these concerns.

**Ms Perrin:** I'll let Don address the career earnings approach. When you said "good evaluation," were you referring to the worker being evaluated in the workplace?

**Ms Akande:** I'm talking about a system of continuing evaluation within the workplace which doesn't focus on just 65: "Let's evaluate them to see whether they can continue on or not."

**Ms Perrin:** Something that will probably surprise many members of this committee is that the vast majority of university professors are evaluated yearly. It's not something that's only done when they're 65 or 60. They have yearly evaluations of their work, of their teaching, of their research, their community activities.

**Dr Flynn:** Indeed, there is more than one yearly evaluation. As a matter of fact, after every course a university professor teaches, he or she is evaluated, so in my experience I'm evaluated three to four times during the year. That is primarily by students, and the results of those evaluations go on to the administration and we receive feedback from the administration about those evaluations, and they of course come into play in APT documents for promotion and tenure.

**Ms Akande:** Those evaluations by students—I have taught at university—really cannot be viewed as being a formal way, unless things have changed, to suspend or end someone's—

**Ms Flynn:** There are actually two different things on the go. There are evaluations by students. There's also a yearly evaluation by the administration for each faculty member. But I disagree that the evaluations by the students cannot be used in any meaningful way. In fact, in my experience they are used in a very meaningful way. The administration takes them very seriously, especially for matters of promotion, in matters of tenure.

**Dr Savage:** In fact, if you look at the collective agreement for Carleton University you will see that the use of the student evaluations is one of the articles in that agreement. The student evaluation is divided into two parts, one part which goes to the university for the purposes of evaluation, and a confidential and more detailed part which goes to the professor himself or herself.

I'd like to turn the other part of your question around, because it seems to me that one of the things that isn't much discussed is that the productivity of university professors is the result of the investment of a considerable amount of public funds. University education is highly subsidized and even more highly subsidized as you move up towards the PhD; research is subsidized from the public treasury and so on. It's often struck me as being peculiar, given this heavy investment by the public in individual university teachers, that the public and their representatives wouldn't want to get the maximum return on it, yet in a province like this the law permits and indeed encourages, I think, the university to forcibly retire professors who could continue to contribute on the basis of that public funding that has come to them. That does seem to me to be a curious waste of the taxpayers' resources.

**The Chair:** Ms Perrin, Ms Flynn, Mr Savage, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and giving us your presentation.

The subcommittee has an agreement: "Should any public bill be referred to the committee, the Chair shall, if necessary, have the authority to authorize an advertisement in all daily newspapers in the province and schedule all witnesses. The Chair shall also have the authority to make all final decisions with respect to any ancillary matters relating to advertising and scheduling, as agreed upon by the three party whips."

Any discussion? This is to facilitate things. There's been nothing referred to the committee, but we're anticipating that there will be. All those in agreement? Carried. Thank you very much.

1640

#### ONTARIO INSTITUTE FOR STUDIES IN EDUCATION

**The Chair:** We've had a cancellation. I'd like to call forward our last witness for the day, from the Ontario Institute for Studies in Education, Dr Arthur Kruger. Good afternoon. Just as a reminder, you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you could keep your remarks a little briefer to allow time for questions and comments from each of the caucuses.

**Dr Arthur Kruger:** Just to reassure, I don't think I'll need more than five minutes for a presentation and then I'll be happy to take any questions you have.

As I understand it, the purpose of Bill 15, which is before this committee, is to abolish compulsory retirement, both under collective agreements and under employer practices, which usually specify retirement at age 65.

The negative impact of this proposal was well stated by the Ontario Court of Appeal and the Supreme Court of Canada in the University of Guelph case. I think it's worth citing from those cases very briefly.

"The freedom to agree on a termination date is of considerable benefit to both employers and employees." This is the



Ontario Court of Appeal. "It permits employers to plan their financial obligations, particularly in the area of pension plans and other benefits. It also permits a deferred compensation scheme whereby employees are paid less in the early years on their productivity and more in later years, rather than have a wage system founded on current productivity.

"In addition, it facilitates the recruitment and training of new staff. It avoids the stress of continuous reviews resulting from ability declining with age and the need for dismissal for cause. It permits a seniority system and the willingness to tolerate its continuance, having the knowledge that the work relationship will be coming to an end at a finite date. Employees can plan for their retirement well in advance and retire with dignity."

Another important objective was the opening up of the labour market for younger, unemployed workers. The problem of unemployment would be aggravated if employers were unable to retire their longer-term workers. The Supreme Court of Canada, dealing with the same case on review, said:

"Following a long history, mandatory retirement at age 65 became the norm and is now part of the very fabric of the organization of the labour market in this country. It has profound implications for the structuring of pension plans, for fairness and security of tenure in the workplace and for work opportunities of others."

Let me say that these comments are particularly applicable to the faculty in the universities. I go back to a quote from the Court of Appeal: "Continuous reviews resulting from ability declining with age and dismissal for cause" will create great hardship for the universities.

Teaching, as I heard the people who were here before say, is monitored by students, but students are usually unwilling to take steps leading to someone's dismissal. If you were to look at the course evaluations, at least at the University of Toronto, which I'm most familiar with—I spent 30 years at the University of Toronto—you would find very few of those evaluations in the "below satisfactory" level. The differentiation is "good," "very good," "outstanding," but you'll find very few, almost non-existent, in the "below satisfactory" level.

I can recall, as dean, that there was a member of the faculty who had a problem with alcoholism. He came into a large first-year lecture and began to lecture, and one of the students said: "Professor X, this is the third time you're delivering this lecture to us. Can't you tell us anything new?" At which point, he sat himself down in the corner of this tiered lecture hall, put his thumb in his mouth and sat there for the balance of the hour while the students waited. The students did not go the department chair. The students did not go to me, as dean. They did not want to take any action that would lead to the firing of this individual. How it came to me and what was done is a separate story. He didn't teach at the university for long, but it wasn't because of student complaints.

Research: As for research results, they're often only measurable over long periods. That's another problem, because you may have somebody who is working on the great book, and the great book may indeed turn out to be a great book or the great book may never materialize. Also, someone may be teaching well and producing research results but dealing with yesterday's problems and yesterday's approaches rather than current problems attacked with new methodologies.

A university needs a constant influx of younger faculty with new concerns and new approaches. Their presence stimulates both the students and the older faculty. We are now in a period of very severe budgetary restraints. Even without the proposed change before us, very few new appointments will be made in the next four or five years in the universities in this province. If Bill 15 is enacted, this virtual hiring freeze will extend till the end of this decade and perhaps longer.

If we bear in mind that the academic job market has not been good during the 1980s, it means we will have produced a whole generation of young scholars who will never find academic employment. It means new groups now beginning to earn doctorates, women and members of various minorities, will be hard hit and universities will be denied the benefits of diversity in faculty, which they desperately desire.

The proposal also undermines collective agreements, which stipulate compulsory retirement at age 65. These agreements have been freely arrived at by unions and employers. Nothing in the current legislation has imposed this on the parties. They have found this mutually beneficial, and that's why they've written it into their agreements. The non-union sector is by and large in step with the generalized practice in the union sector.

At OISE, our faculty agreement, and only our faculty agreement, permits faculty to stay on beyond age 65, solely at the discretion of faculty. The fact that three faculty members have elected this option results in our inability to hire five junior faculty members to replace them. Alternatively, it may result in the layoff of a considerable number of faculty or staff to allow us to work our way out of our deficit position.

Universities do not and will not dispense with talented and productive faculty just because they have reached the age of 65. Most universities provide for part-time or full-time annual appointments of such people by mutual consent, and a considerable number of them stay on and make invaluable contributions. The late Northrop Frye and C.B. Macpherson are two among many at the University of Toronto who taught and conducted research long after 65. An even larger number leave gracefully and with dignity under current arrangements.

I'll be happy to answer any questions you may have.

**The Chair:** Thank you very much. Mr Harnick.

**Mr Charles Harnick (Willowdale):** We've heard a number of presentations, and it strikes me that everyone who comes here representing institutions wants mandatory retirement, and everyone who comes here as an individual or an ad hoc group representing individuals wants the right to work past 65. Who's right?

**Dr Kruger:** Well, I don't have to lecture a group of legislators that most of the interesting problems are balancing two rights and coming to some conclusion on how you're going to draw that balance. I can understand why many individuals of my age would like the opportunity to stay till they're 75 or 80. If you put that in the bill, it's an option I may exercise as an individual, wearing that hat.

Wearing the hat as the institutional director of OISE, concerned with the long-term viability of that institution and the impact its viability can have on the entire education system in this province, I can say that enacting Bill 15 will be a disaster for the institution.



So while it may be good for Kruger, it's bad for the institutions. I'm not schizophrenic. I'm wearing two different hats.

1650

**Ms Akande:** It has been said by a previous group that the finance and planning at the universities is now being done on the backs of the aged. That's not an argument I want to pursue, but I use it as a preface for something I do want to pursue; that is, that you, like some others, have mentioned that one of the things that mandatory retirement will allow universities to do is not only to hire younger people, who are in desperate need of jobs at this time, but also to hire more women, more visible minorities, more people with disabilities and more aboriginals.

Do we have any guarantee that those positions that are vacated by those who leave because of mandatory retirement will in fact be replaced by, or allocated to, people from that group? Or will the older majority be replaced by a younger majority or by a female majority?

**Dr Kruger:** A guarantee that every position that comes vacant as a result of retirement will go to one of these groups? No. But let me say this to you: I looked at the composition of the OISE faculty and the hiring of faculty in the last 10 years; I didn't bring it along with me, but I'd be happy to send it to you. The composition of the OISE faculty is more male than female, but the composition of the hiring in the last 10 years is more female than male. So there's no question that the move has taken place, so the majority isn't simply replicating itself with the same majority, at least on gender grounds.

As for the grounds of various ethnic groups, to the extent that these groups are represented at all at OISE—and I'll only speak for OISE—they're represented by hirings in the last five years. There are people from these various groups now on the OISE faculty, and they've all been hired in the last five years, which means one of two things: either they're more available in the last five years or the hiring pattern has been more sensitive to discrimination concerns in the last five years, or both. That's the only way I can interpret.

**Ms Akande:** Or perhaps more sensitive to quality.

**Dr Kruger:** Well, yes, but I say they're more available. Maybe more people are available and more concerned about hiring on the basis of quality rather than discriminatory patterns, or both.

**Mr Gary Malkowski (York East):** Thank you for this very short and sweet presentation—very direct and to the point. I have two questions for you. I'd like to talk a little bit about the senior citizens' population which is expanding as the number of the younger generations gets smaller. I'm wondering if you could comment on student enrolment. Have you seen a drop? Is there an impact in terms of layoffs? Are you getting more students coming into your institution now?

**Dr Kruger:** Let me say this. I didn't quite finish with Ms Akande's question, and it really relates to this. Your quote was that the financial plight of the universities is "on the backs of the aged." I would argue that it's much more on the backs of the young. It's the young people who aren't being hired who are really paying the price. Certainly at OISE that's the case, because we don't have a policy where faculty have to leave at 65; by collective agreement, we have

another kind of policy. So at OISE, the problem is that bright young faculty, who send in their CVs weekly and for whom there are no jobs, are the ones who are paying the price.

As for student enrolment, we are a graduate school, and what we're finding is not that numbers are declining but that numbers are expanding. As more and more people, and different kinds of people, are getting undergraduate degrees, more and more of them are seeking graduate degrees at OISE; and as more of them are getting graduate degrees at OISE—our enrolments are not going down; our enrolments are at peak levels now; our faculty levels are going down, but our enrolments are at peak levels—as more of them are getting graduate degrees, they're beginning to search for jobs at OISE. So it is not true that there's a declining number of people in the job market. The participation rate of students has gone up, both at the undergraduate and the graduate level. If it goes up at the graduate level, you're producing more potential academics who are not being employed.

**Mr Malkowski:** A supplementary question: Could you tell us a little about statistics of disabled people you have working on the faculty at your institution?

**Dr Kruger:** At the moment, to my knowledge, there are some disabled people not on the faculty but in senior non-academic positions. I can think of a librarian. You're pushing me, because I didn't come armed with statistics in that area.

Again what we are finding, though, that is interesting, is that there are more students with disabilities coming to do graduate work at OISE. In three or four years, they're going to be on the academic job market. For the first time, you'll have a cohort of significant numbers of people with disabilities on the academic job market. The question is, will there be jobs for them?

**Mr White:** Dr Kruger, I was very appreciative of your remarks about the turnover in faculty and the rather extreme example you gave of Professor X and how he had given the same lecture three times. I thought of something aligned with that, and that's very simply that it's been my observation—and this is entirely anecdotal, a generalization perhaps—that when I have visited friends who are on the faculty of U of T, I've been struck with the fact that the books in their library, the language they use, seems to relate very much to the period at which they graduated. University professors are in fact more than any other profession continually updating themselves, but regardless, there's a certain anchor point, and that anchor point was at the point of maturity of their doctoral thesis at the late 1950s, the mid-1970s, whatever that period might be. Again, it's an anecdotal issue, but I'm wondering if that might not be in fact fairly general.

**Dr Kruger:** I may not have picked up on one sentence I had in my short statement. I said that someone may be teaching well and producing research results but dealing with yesterday's problems and yesterday's approaches rather than current problems attacked with new methodologies. And I agree with you, it varies. There are people who at 85 and 90 are young and will in fact be attacking new problems, but they're the exception. They're the exception.

There's no question that, generally speaking, the younger cohort of scholars, if you are in a healthy academic division



where you've got older people, middle-aged people and young people, a nice distribution of staff, the younger scholars are looking at somewhat different problems than the middle-aged scholars and often even using somewhat different methodologies to attack those problems, and the middle-aged with the older scholars. Yes, you can usually detect the generation approach.

There are exceptions. There are people who are old at 20 and there are people who are young at 85, but the standard, if you take the large numbers, I think there's a lot to what you're saying.

**Mr White:** Following that, you mentioned Norry Frye, who has always been a hero of mine, and I attended many of his lectures back in the early 1970s. You know, someone like that, who continued to be rehired on a sessional basis—

**Dr Kruger:** We kept Norry Frye; I don't know what age he was when he died, but he was a full-time member of the faculty of the University of Toronto. We kept C.B. Macpherson; I could give you many others. The university would be stupid to lightly turf out somebody as productive as Norry Frye because the person happens to be 65 years of age. Endel Tulving—I could give you lots of them—Emil Fackenheim. I just go back to my days as dean and since then: the large number of people, some of them kept on full-time, some of them at 50%, some of them at 30%, 60%—all sorts of arrangements were worked out with large numbers of faculty who were still productive at 65.

**Mr White:** And mandatory retirement did not prevent these people from continuing to be productive.

**Dr Kruger:** Not at all.

1700

**Mr Winninger:** Dr Kruger, I was intrigued by your statement that at OISE you don't have mandatory retirement, that in fact, pursuant to a collective agreement, some members of the faculty do stay on past age 65.

**Mr Kruger:** That's correct.

**Mr Winninger:** First of all, perhaps you could give some indication of how many faculty members there are and what number or percentage of the total faculty are actually electing to stay on past the magic age of 65.

**Mr Kruger:** That provision in the agreement is relatively recent. I am not sure whether it's two years ago or four years ago, but it's relatively recent.

Three people have elected to stay on beyond 65. There's a total of about 140, 145 faculty members at OISE, depending on how you count. A lot of them, of course, are well under 65. I couldn't give you a figure—if you want, we could dig it out, but I haven't got it here—on the percentage of those who turned 65 in this period who elected to stay on, but there are three people who have elected to stay on and some indication that some others will likely exercise that option if it remains in the collective agreement.

**Ms Carter:** To follow up this idea of the old blocking the young, in at least one presentation we heard it seems as though when people retire, the institution is so short of money that it doesn't actually hire anybody, just abolishes the job or starts having semestral appointments or part-time appointments instead of proper tenure jobs, so it's probably getting the same work for a lot less money. So I put it to you that

maybe the problem is not people blocking the progress of the young, but sheer shortage of money.

**Mr Kruger:** Well, Ms Carter, it's both, and I'm not ducking your question. I have a deficit of \$1.5 million at OISE as of the end of last budget year. I've got to work off that deficit, and it's true that a significant number of people who leave OISE, for whatever reason—retirement, death, going somewhere else—will not be replaced because those positions will go partly to work off that deficit. But I can work off that deficit sooner if people retire than if they don't retire, and the sooner I work off that deficit, the sooner I get to a position, hopefully, where I will be able to hire some people. In fact, I'll have to hire some people even as that deficit remains, just to preserve the program.

What I'm saying is, keeping people on to 65 prolongs the period in which there's going to be little or no hiring. It's not completely because of the 65 problem; sure, if universities were in a period in which we were running large surpluses, we could do both. We could hire young people and keep people after 65.

So you're right, it's the financial problem which is there, but I'm saying it's exacerbated: The more people who stay after 65, the less likely it is that we're going to hire anybody, given the current financial situation.

**Ms Carter:** Actually, pursuing that point, it seems to me that in society we have an increasing shortage of jobs, partly because of automation and all the rest of it, greater productivity, and maybe we ought to, in the long term, be looking at people retiring earlier rather than later. But maybe in that case there could be a much wider element of choice: Maybe it would be the number of years that somebody had actually worked rather than their age that would be crucial, because some people start late.

**Mr Kruger:** That's certainly something to look at, and you'll find that most universities do in fact have voluntary early retirement schemes—nobody gets pushed out—and significant numbers of people are taking advantage of those early retirement schemes, who have plans for things they've always wanted to do. And with those who take early retirement, it's the same problem as who takes late retirement. Some of them are people you're happy to see go and some of them are people you're not happy to see go at all. It's mixed.

As to the question of how many years people have been in the labour market, I understand where you're coming from. It is a problem, particularly for women, and that's something that might be looked at.

**Ms Carter:** Of course, that's relevant to the question of how recent somebody's qualifications are, because you can be chronologically older but your qualifications can be recent.

**Mr Kruger:** Much more recent, yes.

**Ms Carter:** I don't accept my colleague's point that people who qualified way back probably just have the books that represent that period of scholarship. If that's the case, I would think they were never very good in the first place.

**Dr Kruger:** I don't mean that. But I do think there is a difference in outlook—I'm an economist—between economists who graduated when I graduated and the younger economists who are coming out now. For example, the younger ones are much more mathematical, much more gifted in



mathematics, have a much stronger background. The discipline has changed. They look at somewhat different problems than I looked at. It's probably useful to have both kinds of people on a faculty.

**Ms Carter:** Is the change necessarily for the better?

**Dr Kruger:** No. I think it's useful to have both kinds of people on the faculty. But I think that's true in most disciplines.

Methodologies of disciplines change. You mentioned Northrop Frye. The approach to criticism in English literature has changed. I don't say for the better or for the worse. I think the U of T English faculty was blessed by having both the Northrop Fries and some of the younger people with different approaches, and I think that's a healthy thing.

What's happened in the universities, if you examine the hiring practices, is that instead of being a pyramid like this, you've got an inverted pyramid in the universities, where the bulk of the people are full professors and associate professors, with precious little at the bottom. And you've got to open that up. I don't say close the top, but you've got to open that up. That's where the real problem is. The real problem is at the bottom, where there's been very little hiring for 10 or 15 years.

**Ms Carter:** But that's not a permanent problem. That's just something that's current, and to make permanent choices on the basis of that, as to what the regulation should be, may be mistaken.

**Dr Kruger:** Well, I'll say this to you. Your time is getting late. I am an economist, and one of the economists I

studied with when I was a student and whose books are still on my shelf is Lord Keynes. Lord Keynes said: "We've always got to worry about the long run, but you can never forget that in the long run we're all dead. We've got to move through a lot of short runs to get to the long run."

Right now, with the short run we're in, this bill would be a disaster. It may well be that in the long run, in the year 2010 or something, all the greybeards like me will be gone and a whole bunch of young ones will be in, and we'll be back to a different kind of pyramid. But we've got to get there. My concern is, how do we get there in the next 10 years? If this bill is enacted, we aren't going to begin to get there in the next 10 years.

**Ms Carter:** In the long term, there are going to be fewer younger people coming in.

**Dr Kruger:** Not into academic positions, because the proportion of those younger people who are getting doctorates is growing.

**The Chair:** Dr Kruger, on behalf of this committee I'd like to thank you for taking the time out this afternoon and bringing us your presentation.

**Dr Kruger:** Thank you for this opportunity to be with you, to see old friends.

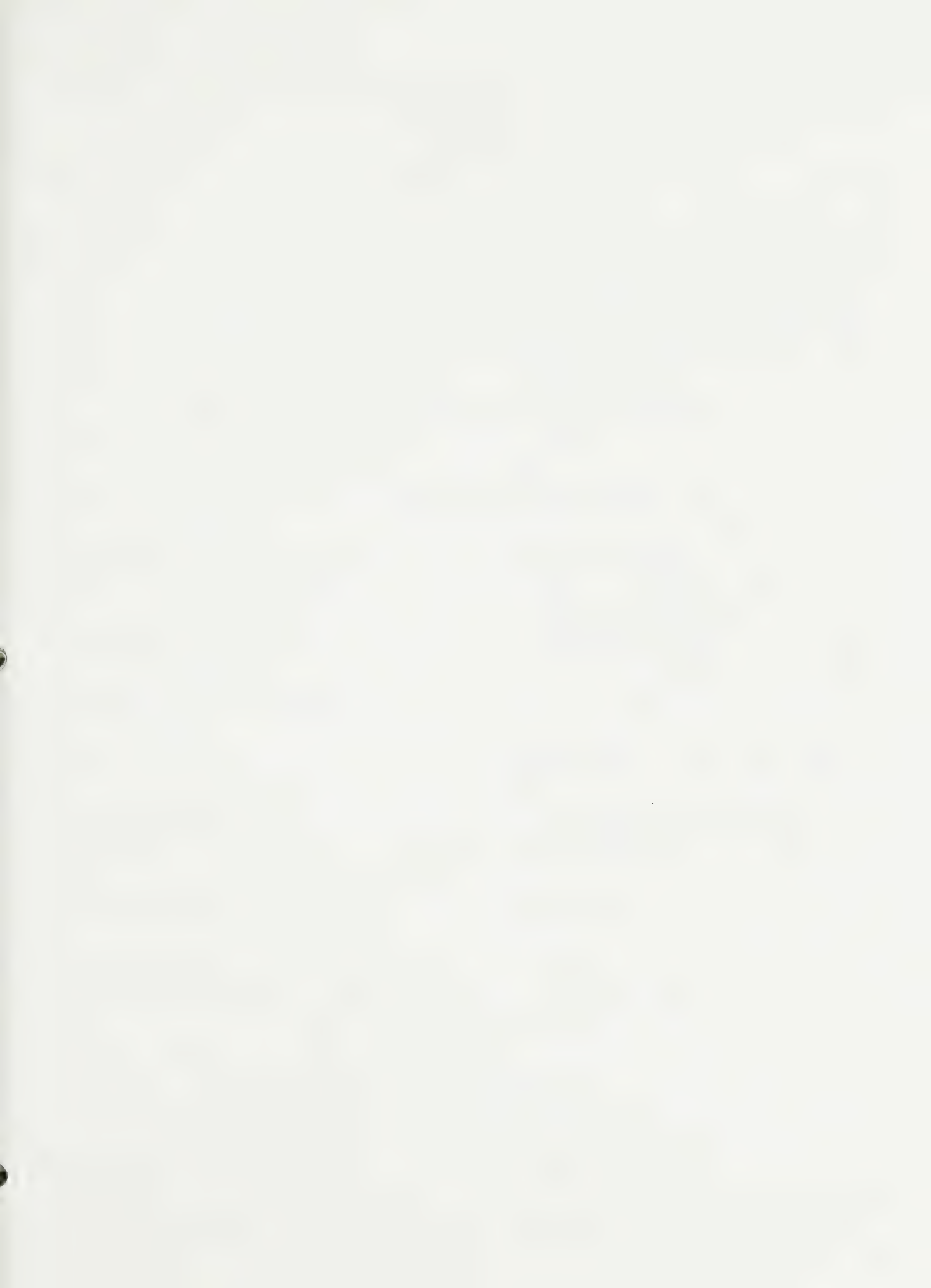
**The Chair:** Thank you very much.

Seeing no further business before this committee, this committee stands adjourned at the call of the Chair.

The committee adjourned at 1708.







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- \*Malkowski, Gary (York East/-Est ND)
- Runciman, Robert W. (Leeds-Grenville PC)
- Wessinger, Paul (Simcoe Centre ND)
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\*In attendance / présents

### **Substitutions present / Membres remplaçants présents:**

White, Drummond (Durham Centre ND) for Mr Wessinger

**Clerk / Greffière:** Freedman, Lisa

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## Legislative Assembly of Ontario

Second Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Monday 18 January 1993

### Standing committee on administration of justice

Pay Equity Amendment Act, 1993

Public Service Statute Law  
Amendment Act, 1993

## Assemblée législative de l'Ontario

Deuxième intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Lundi 18 janvier 1993

### Comité permanent de l'administration de la justice

Loi de 1993 modifiant la Loi  
sur l'équité salariale

Loi de 1993 modifiant des Lois  
en ce qui concerne la fonction  
publique

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 18 January 1993

The committee met at 0941 in room 228.

PAY EQUITY AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT LA LOI  
SUR L'ÉQUITÉ SALARIALE

PUBLIC SERVICE STATUTE LAW  
AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT DES LOIS  
EN CE QUI CONCERNE LA FONCTION PUBLIQUE

Consideration of Bill 102, An Act to amend the Pay Equity Act / Loi modifiant la Loi sur l'équité salariale, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act / Loi modifiant la Loi sur la fonction publique et la Loi sur la négociation collective des employés de la Couronne.

**The Chair (Mr Mike Cooper):** I'd like to call this committee to order. Good morning, everybody. I hope you all got a few days' rest over the new year break. I'd like to welcome all the committee members back and all the staff members on the committee.

This morning we'll be starting the first round of public hearings on Bill 102, An Act to amend the Pay Equity Act, and Bill 169, An Act to amend the Public Service Act.

It's my understanding that we'll be proceeding with the briefing from the Honourable Bob Mackenzie, the Minister of Labour, and then Mr Wayne Lessard, the parliamentary assistant for Management Board, and then we'll be proceeding to the technical briefing, at which time we'll proceed to questions and comments from each of the caucuses, if that's in agreement with the committee members.

Good morning, Mr Mackenzie. Could you please identify yourself for the record, and then proceed.

**Hon Bob Mackenzie (Minister of Labour):** Bob Mackenzie, Minister of Labour. Good morning. It's a pleasure for me to open this period of deliberation and public review concerning Bill 102, the Pay Equity Amendment Act.

To set the stage for the important work of the next few days, I want to recall briefly the origins of this bill, the need for it, and outline the historic impact it will have on the Ontario workforce.

Bill 102 ensures that wage discrimination against women will continue to be fought until it is eliminated in this province. The bill guarantees that our efforts for working women will not stop under financial pressure facing the province.

Ontario's legal provisions against wage discrimination will be strengthened by this bill. Working women will soon have new tools to achieve pay equity through proportional value and proxy comparisons.

The historic and systemic undervaluation of women's work shall not continue, but Bill 102 does take into account the difficult economic constraints of our time. Thus, the time lines for implementing some sections of Bill 102 have been extended. However, the government's annual payout of millions

of dollars for pay equity in the broader public sector will continue, only at a slower pace than we had hoped.

This extended time line is in keeping with the Treasurer's statement in November that Ontario cannot continue business as usual at this time of financial crisis, for the crisis personally affects all of us in this room and throughout the province. Financial constraint was the driving force behind our decision to replace Bill 168 with Bill 102.

In spite of current constraints, I am happy that the Pay Equity Act, which I've championed from the start, has changed Ontario's workplace culture. It has provided a means to eliminate the wage inequities that working women have endured for so long.

As I have said on previous occasions, I believe history will record the achievement of pay equity legislation in Ontario as a landmark accomplishment of our times. Obviously, we are not here to rest on our laurels. Even today, the average earnings of working males exceeds the female average by more than 30 cents on the dollar, as Statistics Canada reported last week.

In asking you to support the measures of Bill 102, I want you to recall and revive the spirit of consensus that was present among Ontario's legislators when the Pay Equity Act was passed in 1987. I think that was a happy occasion, and it was remarkable the extent to which we did achieve some unanimity on this issue.

That consensus for justice for working women helped change the face of the workforce in Ontario. In this province, as of September 1992, there were 2,145,000 working women, more than 45% of the workforce. That's a figure, as most of you are aware, that has been increasing. At least 600,000 working women have achieved or have begun the process of achieving pay equity, of receiving wages that represent the real value of their work.

During the next five years, hundreds of thousands more will also attain equitable wages. As of this past New Year's Day, and with final approval of Bill 102, at least 340,000 more working women will have gained an effective pay equity method through the proportional value amendment that is in front of you. Another 80,000 working women in the broader public sector will be able to benefit starting 12 months later, on January 1, 1994, when the proxy comparison amendment takes effect.

The need for this package of amendments can be traced back to the original Pay Equity Act of 1987. This act presented one basic method for achieving pay equity: job-to-job comparisons. Those original measures were welcomed as a good start for pay equity, which was uncharted territory at that time. However, there was also consensus that future modifications would be needed to deal with workplaces where pay equity comparisons could not be made because of a lack of male jobs for comparison.

By responding to those situations, Bill 102 will have enormous positive impact on succeeding generations of working women in this province. It will help ensure that as many as possible will benefit from pay equity legislation. Because of its ground-breaking nature, the proxy comparison method took time to develop. In 1991, a preliminary proxy comparison model was developed and tested in consultation with stakeholders. That first model was found in need of revision.

Our policymakers and stakeholders continued trailblazing. By working out various revisions, a second, more workable proxy model was created in 1992. That model is in front of you now. The additional working time made it possible for the revised proxy model to be written into the legislative provisions of Bill 102, reducing the need for regulations which were anticipated under the precursor Bill 168. The changeover to Bill 102 has yielded positive results by enhancing the legislative wording.

Bill 102 also contains ground-breaking administrative provisions. For example, when companies and businesses are sold, transferred or restructured, pay equity plans remain protected and in place for the employees covered. Women will not see their pay equity rights vanish or diminish because of workplace transformations over which they have no control.

Another new measure aims at encouraging parties to settle pay equity disputes before lengthy litigation by permitting the use of pre-hearing conferences and providing for pre-hearing settlements.

I feel it is important to correct a misunderstanding that appeared in some quarters after Bill 102 went to first reading in November. At that time, some observers suggested the government had put its commitment to pay equity on hold for three years. Nothing could be further from the truth. Rather the new measures on proportional value and proxy comparisons will come into effect, as I mentioned, one year later than originally expected. Also, the completion date for pay equity in the public sector will now be 1998 instead of 1995.

#### 0950

Public sector employers must still continue to make pay equity payments at the 1% of payroll annual rate required by law, and the government will continue to provide funding every year to assist them to do so.

Public sector employers will have an extra three years to close the male-female wage gap completely. Government funding for pay equity will continue throughout those years. The bottom line is that the level of pay equity implementation we expected to reach in 1995 will be reached in 1998.

Also, I am happy to confirm that the government is proceeding immediately with an interim program to provide a pay equity down payment to thousands of workers in the lower-paid areas of the broader public sector. The government is committed to having those down payment cheques mailed during the spring months.

The down payments will begin the movement towards pay equity for many low-paid working women who have been unable to use the existing Pay Equity Act to achieve equitable wages.

The pay equity down payment program will be similar to the 1991 wage enhancement that the Ministry of Community and Social Services paid to child care workers. That program

provided payments of \$2,000 towards pay equity for almost 14,000 child care workers.

To speed the pay equity down payment program, officials of the Ministry of Labour have recently surveyed about 1,800 agencies employing more than 63,000 workers in the broader public sector.

Those agencies included home support workers and homemaker services, women's shelters, immigrant services, community mental health programs, and developmental services such as associations for community living.

Almost 80% of the agencies surveyed have already returned the questionnaires to officials of my ministry. The replies are being analysed to establish the proper criteria for eligibility and to determine the number of workers who qualify for the down payment. This analysis will also establish the amount each eligible worker will receive.

Beneficiaries of the down payment program will include workers who are funded through five ministries: Community and Social Services, Health, Citizenship, Correctional Services and Culture and Communications.

Within a matter of weeks, our analysis will yield all the relevant figures and I look forward to announcing the amounts of the pay equity down payment as soon as possible.

In closing, I want to remind you that in the mid-1980s, while in opposition, we rallied support among the dominant parties of the day and pioneered the Pay Equity Act of 1987.

Pay equity legislation has made this province a trendsetter among other jurisdictions, national and international.

In 1993 our proportional value and proxy comparison methods of Bill 102 are drawing, I can tell you, just as much notice from other jurisdictions seeking to achieve pay equity.

In the hope that this committee will soon move Bill 102 closer to reality, let me appeal once more to the spirit of consensus that launched the pay equity program in Ontario in 1987.

Our quest for justice for working women is not an optional extra that we add on during good economic times. Justice is an essential condition that compels us to act now in conscience and in law.

Therefore, I am confident in asking the members of this committee to report favourably on Bill 102 so it can proceed to third reading.

I want to thank you for the opportunity to make this opening statement.

**Mr Wayne Lessard (Windsor-Walkerville):** It's a pleasure to be here this morning to speak to Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act and its accompanying regulations. This is companion legislation to Bill 102, An Act to amend the Pay Equity Act.

**Ms Dianne Poole (Eglinton):** On a point of order, Mr Chair: I just wondered if we could have a copy of Mr Lessard's speech or if it is contained in any of the materials distributed.

**The Chair:** Do we have a copy?

**Mr Lessard:** I thought copies had been distributed. We'll get those as soon as possible.



**Mrs Elinor Caplan (Oriole):** It's general procedure that all members of committee receive copies, not just the government caucus.

**The Chair:** Agreed. I believe they're being handed out right at this moment. If all committee members have a copy, you may proceed, Mr Lessard.

**Mr Lessard:** As I was indicating, this is companion legislation to Bill 102, An Act to amend the Pay Equity Act. It supports that bill by clarifying the status of crown employees and crown employment. This bill complements those changes to the Pay Equity Act and will ensure that the government cannot be named the employer for pay equity purposes or for any other reasons.

The improvements to the Pay Equity Act will assist hundreds of thousands of Ontario women, those whose work is undervalued and underpaid, to achieve pay equity. At the same time, we recognize our responsibility to manage the size and cost of the public service.

**Mrs Caplan:** On a point of order, Mr Chairman: I don't have a copy of his statement. It's not what he's saying. I'm looking at the notes that are here and they—

**Ms Poole:** We have every second page, actually.

**Mrs Caplan:** I have pages 1, 3, 5 and 7. Who has 2, 4 and 6? I'm prepared to wait till this government can get its act together and provide us with a proper—

**Ms Poole:** I'm not; that would take years.

**The Chair:** Perhaps we could call for a 10-minute recess until we get a proper copy for all the committee members. This committee stands recessed for 10 minutes.

The committee recessed at 0956 and resumed at 1007.

**The Chair:** I'd like to call this committee back to order. I believe everybody has a copy now. Mr Lessard, you may proceed.

**Mr Lessard:** Mr Chair, for the benefit of my opposition colleagues who had difficulty following my remarks without the printed word, I think I'll start from the beginning.

As I indicated, it's a pleasure for me to be here. As I was saying, Bill 169 is companion legislation to Bill 102, An Act to amend the Pay Equity Act. It supports that bill by clarifying the status of crown employees and crown employment. This bill complements those changes to the Pay Equity Act and will ensure the government cannot be named the employer for pay equity purposes or for any other reasons.

The improvements to the Pay Equity Act will assist hundreds of thousands of Ontario women whose work is undervalued and underpaid to achieve pay equity. At the same time, we recognize our responsibility to manage the size and cost of the public service.

Bill 169 clearly defines the boundary between government employees and those of independent broader public sector agencies. It places an important responsibility, that being the ability to determine the size and cost of the public service, solely in the hands of the government. The amendments will allow us to manage the size and therefore the cost of the public service.

This government is meeting two strong commitments: to correct the historic and systemic undervaluation of women's work and to fulfil its broad compensation duties effectively

and fairly. At the same time, we are fulfilling our fiscal responsibilities by controlling the size of the public service.

The amendments in Bill 169 make the government solely responsible for assigning employee status. To this end, Bill 169 amends the Crown Employees Collective Bargaining Act and the Public Service Act so that only the crown may expressly grant status as a crown employee and an Ontario public servant.

This is needed because certain features of the original Pay Equity Act left a loophole through which pay equity office review officers and the Pay Equity Hearings Tribunal could name the province as the employer for pay equity purposes of workers in various broader public sector organizations.

This happened mostly in cases where there were no male comparators in an establishment, so that pay equity could only happen if the provincial government could be deemed the pay equity employer. If the government becomes the pay equity employer, it must negotiate a pay equity plan with the named employees based on wages in the public service. With the new methods for reaching pay equity, that is, proxy and proportional value methods slated in Bill 102, employees will no longer have to prove the government is the pay equity employer to achieve pay equity.

Bill 169 deals with another possible way of naming the province as employer through the Crown Employees Collective Bargaining Act, or CECBA for short. Currently this act allows the Ontario Public Service Labour Relations Tribunal to decide if certain agencies are crown agencies or if individuals are crown employees, allowing them to bargain collectively with the crown. CECBA also gives the tribunal the power to decide that employees of agencies that receive money from the government or fall under government regulation are public servants. They then become members of the public service bargaining unit and are paid Ontario public service rates. Bill 169 amends the Crown Employees Collective Bargaining Act and the Public Service Act to allow the crown, as employer, to set out once and for all its right to define and determine who is a government employee.

At this time I'd also like to table draft regulations to Bill 169. I believe the clerk has those available to be distributed as well. These regulations designate crown agencies in order to define "crown employee" as set out in the bill.

I also have with me Kathy Bouey, the assistant deputy minister of the broader public sector labour relations secretariat, who's prepared to address the specifics of the bill at an appropriate time. That concludes my remarks.

**The Chair:** Thank you very much. Who will be proceeding next?

**Mr James R. Thomas:** I think I am.

**The Chair:** Mr Thomas?

**Mr Thomas:** Yes.

**The Chair:** Will you please identify yourself for the record and then proceed.

**Mr Thomas:** My name is Jim Thomas. I'm the Deputy Minister of Labour. I have with me Catherine Evans, who is from the pay equity policy group within the Ministry of Labour. I think there are two documents to be handed out. One is a text of my comments and the second is a series of tables I'd like to use for my technical briefing.



There are three parts to this presentation. I will begin by providing you with an overview of the current Pay Equity Act, telling you to whom it applies, describing the job-to-job method of comparison and outlining the existing administrative and enforcement provisions. In the second part of my presentation I will discuss the purpose of Bill 102 and the two new methodologies of making pay equity comparisons that are contained in the bill. Third and last, I will lead you through a detailed examination of the major features of Bill 102.

Let me start with an overview of the current act.

The Pay Equity Act was passed in 1987 and came into effect on January 1, 1988. It applies to all employers in Ontario except for those employers in the private sector who have nine or fewer employees. It also applies to employees and to bargaining agents.

The stated purpose of the Pay Equity Act as found in part I is to "redress systemic gender discrimination in compensation for work performed by employees in female job classes." The act requires employers and bargaining agents, where there is a bargaining agent, to examine whether there is gender discrimination in an establishment by making comparisons between female job classes and male job classes. The comparisons are made between the compensation received by employees in male and female job classes and the value of the work they perform, the general idea being that jobs of a similar value should be paid a similar amount.

The act describes value as a composite of four criteria, "skill, effort, the responsibility normally required in the performance of the work and the conditions under which the work is normally performed." These criteria provide the common denominators for determining the value of all jobs and make comparisons possible between jobs that on the surface appear quite different.

Because the act requires comparisons between male and female job classes, an employer and bargaining agent must first determine which job classes are female job classes and which are male. A female job class is described by the act as being a class in which 60% or more of the members are female. A male job class, by comparison, is a class in which 70% or more of the members of the class are male. Some jobs, of course, will be neither 60% female nor 70% male. These job classes are gender-neutral job classes and are not involved in the pay equity process.

The system of making comparisons I am about to describe to you is known as the job-to-job comparison method. It is currently the only method of comparison provided for in the Pay Equity Act.

Let me turn first to table 1, which is in the other document that has been handed out. If I could just make a few comments about the four tables I'm going to take you through, they are an attempt to describe visually what pay equity is about now and the changes that will occur as a result of the two new methodologies.

Table 1 shows you a graph of wage, going up the vertical axis, against value, going across the horizontal axis. What we've tried to give you a picture of here is, let's say, a typical establishment and the bargaining unit broken down into male and female job classes, being Ms and Fs. Generally speaking, jobs that are lower in value receive a lower wage rate. For that reason, you have a graph that tends to go from the bottom

left to the top right. That's typical of most organizations. It is also typical of most organizations that the Ms tend to be higher wage rates than the Fs. You can see that for the most part that is the case on table 1.

Once the male and female job classes are identified and the determination of the value of each job class is made, female and male job classes that are of equal or comparable value are then compared in terms of compensation. For instance, M1 and F1 are two job classes, a male and female job class, that are of similar value. They both have a value of one. Normally, the way you get that is by doing a survey of the establishment, asking questions about skill, effort, responsibility and conditions of work for the various jobs throughout the organization. By doing that, you can ascribe points to the various job classes.

In the case I've just outlined, M1 and F1 have the same value, but M1 is making more money than F1. So the pay equity adjustment would be the vertical line that's required to bring F1 up to M1. Similarly, F5-M5 would be a case where there is a pay equity adjustment available to F5 to bring that class up to M5.

If a male job class of equal or comparable value cannot be found for a female job class, a male job class that is of lower value but that receives higher compensation can be used. That, for example, shows up with F7 and M5. F7 is a female job class that is of higher value than M5. M5 gets a higher wage rate, so F7 is entitled to an adjustment to bring that class up to M5.

The one additional rule that is applied in making comparisons is that female job classes in a bargaining unit must be compared to male job classes in the same bargaining unit. Only if there isn't a comparable male class can they look to a male job class in a different bargaining unit and then to any male job class in the establishment. The same is substantially true for non-bargaining-unit job classes.

Obviously, there will be occasions where there is more than one male job class that can be used as a comparison for a female job class. In this case, the current act requires only that the lowest paid of the eligible male job classes be chosen as the basis of the job-to-job comparison. F4 is an example of that. In F4, you have two male job classes that are of similar or comparable value to F4 but are earning more money than F4. The law requires that you bring F4 up to the lower of the two M4s to achieve pay equity.

There will also be situations where there are no male job classes that can be used for making a comparison; F3 and F6 are two examples in table 1 of female job classes for which there are no male job classes. You have a hunch, looking at F3 for sure, that if there was an M, that M might be higher than F3 and F3 might be entitled to a pay equity adjustment, but there is no M to compare F3 to, so that female job class does not get a pay equity increase. This problem is addressed by one of the two new methods which I will talk about shortly.

The objective of making the comparisons is to determine if there is any difference in the compensation received by the male and female job classes that have similar value. This difference, as I've said, becomes the amount by which the compensation for the female job class must be adjusted in order to achieve pay equity. In pay equity parlance, this is



known as the pay equity adjustment. In any one year, the minimum amount which an employer is obliged to spend on making pay equity adjustments is 1% of the previous year's payroll or the amount required to achieve pay equity, whichever is less.

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In the private sector, this obligation continues until pay equity is achieved, with no final deadline. In the public sector, there is a deadline, currently January 1, 1995. Thus, in order to achieve pay equity by the deadline, a public sector employer might be required to spend more than 1% of the previous year's payroll in the final year, if more than 1% is needed in that year to achieve pay equity.

Part II of the act governs the process for achieving pay equity for all public sector employers and employees and private sector employers with 100 or more employees. "The public sector" is defined in the Pay Equity Act according to a schedule that you can find at the end of the act. It includes the Ontario public service as well as provincial agencies, boards, commissions and corporations. The public sector in pay equity also includes municipalities, schools, hospitals, colleges and universities as well as a significant number of smaller transfer payment agencies. Examples of these include child care centres, social welfare agencies, community corrections agencies, public libraries and public health agencies such as ambulance services and detox centres.

These public sector employers, along with private sector employers with 100 or more employees, must achieve pay equity through posting a pay equity plan. The plan sets out the comparisons made, the basis on which jobs were valued and the adjustments required. Smaller private sector employers can opt into the system of posting a pay equity plan or they can choose not to post a plan and come under the rules of part III.

A basic principle of the Pay Equity Act is to make the achievement of pay equity a process which the workplace parties are able to manage on their own. The extensive detail on when and how to make comparisons contained in parts I and II of the act is designed to allow employers and their employees and bargaining agents to do the work themselves, without the intervention of government. To a very great degree, this is what happens. Employers prepare plans for non-unionized employees and negotiate pay equity plans with bargaining agents. Non-unionized employees have an opportunity to review and provide comments to their employer on a plan that affects them. The plans are not filed with any administrative agency, and no one in government monitors their implementation.

The expression "deemed approved by the commission" is used in the act to describe settled plans agreed to by the workplace parties. Occasionally, however, problems do come up and the assistance of the Pay Equity Commission is required.

Parts IV and V of the act contain the enforcement and administrative provisions of pay equity. As I mentioned at the start, the Pay Equity Commission has two components: the pay equity office and the Pay Equity Hearings Tribunal. The pay equity office has a number of functions. It does research to assist employers and employees in achieving pay equity,

and it also provides educational and informational materials and seminars.

Another major role it serves is in the first handling of complaints about the implementation and maintenance of pay equity. The review services branch of the pay equity office receives roughly 700 cases yearly. Review officers are able to facilitate settlements in about 85% of those cases. The nature of the complaints vary widely, but many address the issue of whether or not a male or female job class has been properly valued and compared.

Complaints that are not settled are generally dealt with by a review officer issuing an order. If one of the parties is not satisfied with the order, it can be referred to the Pay Equity Hearings Tribunal for a full hearing. The Pay Equity Hearings Tribunal receives approximately 130 cases yearly. The tribunal has developed settlement proceedings of its own, which will be given statutory approval with the Bill 102 amendments, and is successful in settling a further 40% of cases. The remaining cases are heard by a tripartite panel of members who exercise a quasi-judicial function. Some of the exact rules of proceedings will be clarified by the Bill 102 amendments. Tribunal orders are binding on the parties.

This concludes my remarks on the current Pay Equity Act. I now propose to move on to part II, which is to talk about the general purpose of Bill 102.

As I mentioned in my remarks on the current Pay Equity Act, the job-to-job method of comparison does not ensure that all female job classes are able to be compared to male job classes and so fails to achieve a fundamental purpose of the Pay Equity Act. This fact was recognized at the time the act was passed, and to remedy this problem the pay equity office was directed to conduct a study of alternative ways of achieving pay equity.

In October 1989 the pay equity office finished this task and gave to the then Minister of Labour, Gerry Phillips, a well-researched and comprehensive study entitled Report on the Achievement of Pay Equity in Sectors of the Economy which are Predominantly Female.

Included in the report were recommendations for amendments to the act to provide for both proportional value and proxy comparisons. Proportional value comparisons provide means of achieving pay equity by making comparisons possible between male and female job classes of different values within the same establishment. It was recommended that both private sector and public sector employers be able to use proportional value. Proxy comparisons are comparisons across different establishments. Thus an establishment which has no male job classes compares its female job classes to job classes from another establishment that does have male job classes. Only public sector employers were recommended to be proxy users.

The Ministry of Labour consulted extensively on these recommendations before the minister introduced the bill before you. The recommendations to provide for proportional value comparisons were almost instantly accepted by government, business and labour. In fact I have heard many say that, in retrospect, it would have been better to have had proportional value comparisons from the start of pay equity.

Consultations on proportional value comparisons held in March 1990 and again in March 1991 served to confirm the



widespread acceptance of proportional value as an appropriate and useful pay equity method for both public and private sector establishments. Indeed, it is already widely in use, even without legislative direction.

The recommendation to enact proxy comparisons for use in the public sector also found widespread support. Proxy was a fairly novel idea, however, and there were some questions about how it would work. The great need for proxy comparisons or something like them was not in dispute. The workers who will benefit from proxy are among the most underpaid of society's workers. They include child care workers, home care providers, child welfare workers and many others in small social service and health care agencies in the public sector.

The Ministry of Labour consulted widely on various approaches to implementing proxy comparisons. Consultations in the spring of 1992 produced the mode of proxy comparisons that you have before you in Bill 102.

While proportional value and proxy comparisons are the most important features of Bill 102 and the primary policy reason for the existence of Bill 102, there are a number of other matters that the bill deals with. One that I mentioned to you just a moment ago is the procedural changes that will allow the Pay Equity Hearings Tribunal to conduct its hearings in a more efficient manner, with less argument over what rules apply.

Other provisions contained in the bill deal with a variety of administrative and definitional issues that have come up over the course of our five-year experience with the act. One of these is the definition of "employer" as it relates to the crown in right of Ontario. Another is dealing with a pay equity plan when there is a sale of all or part of a business, or when there is a major change in the organization or structure of a business such that the plan is no longer appropriate. Another important issue concerns the maintenance of pay equity and what standard should be set for maintaining pay equity. While we have not proposed a specific amendment on this issue, there is provision for a regulation.

#### 1030

Finally, there are a number of very small matters that were overlooked or dealt with inadequately when the act was first passed. Ensuring the anonymity of complainants is one of these, as is providing a notice to be posted in workplaces advising employees of their pay equity rights, similar to the way employees are advised of their right under the Occupational Health and Safety Act or the Human Rights Code.

Of course Bill 102, unlike Bill 168, also deals with the deadline for achieving pay equity in the public sector. Economic conditions, plus the passage of time leading to the commencement of proportional value comparisons, have made the 1995 deadline for achieving pay equity in the public sector unrealistic. A new deadline of January 1, 1998, has therefore been proposed.

This new deadline will allow public sector employers a full five years, starting in 1993 at a minimum rate of 1% a year, to fully implement proportional value comparisons. It will also allow those public sector employers who face adjustments of more than 1% in 1995 in order to meet the 1995 deadline a further three years to complete their adjustments. The deadline does not affect public sector employers who

will use proxy comparisons because these employers, like all private sector employers, do not have a deadline.

These, then, are the main areas addressed by Bill 102, and I will now turn to the specific provisions of the bill.

Let me just indicate that in your own review of the act, using the clause-by-clause book that Ministry of Labour staff have prepared for you, you will know that there are a fair number of incidental amendments. These are mainly in there to permit the rules that apply to job-to-job to be extended, where appropriate, to the other two methods of achieving pay equity.

Let me start then with proportional value. Section 12 of your bill, beginning on page 6, is where the main part of the proportional value comparison method is set out. Proportional value will add 10 new sections to the Pay Equity Act. Both public and private sector employers can use proportional value comparisons. An employer must use proportional value comparisons if there is a female job class in the employer's establishment that cannot be compared using the job-to-job method. For example, the employer I showed you on table 1 has a problem with F3 and F6. That employer would be required to see if anything can be done to achieve pay equity for those female job classes using proportional value.

Employers can also use proportional value comparisons in place of job-to-job comparisons if the adjustment is not lower. An employer and bargaining agent, if any, who are still unable to make a comparison for a female job using proportional value comparisons must notify the pay equity office, and if that establishment is in the public sector, then proxy comparisons may be required.

Proportional value comparisons are a way of making indirect comparisons between a female job class and a representative group of male job classes. The critical difference from job-to-job comparisons is that proportional value comparisons can be made between male and female job classes of different values. The key concept for being able to do proportional value comparisons is the selection and existence of a representative group of male job classes. While the bill does not say precisely what that is, as it will be different things depending on the context, the intention is that the job classes selected should be representative of the way in which male job classes are valued and compensated by the employer. Ideally, therefore, it would include male job classes that span the range of values for jobs in the employer's establishment.

I ask you now to turn to table 2. Table 2 is essentially that same establishment that I talked to you about in table 1 that was able to do some job-to-job comparisons and therefore some pay equity adjustments for some of the female classes, and you have before you in table 2 an example of the wage-line method of defining a representative group of male classes.

What in fact has been done in the wage-line method is, an attempt has been made to draw the best line possible, the best fit, if you will, through the male job classes. That becomes, therefore, the representative male wage rate at any particular value. Therefore, you can see that if there were a male job class that had a value of three—there isn't—that wage line suggests that male job class would probably be paid somewhere on that line, hence the notion of the adjustment being from the female job class, that dotted vertical line up to the



wage line. That's how proportional value is able to fill in the gaps for those female job classes in establishments that did not have male job classes of similar value.

In table 3, you have an example of a wage line being used in an establishment where no job-to-job comparisons were possible. If you look at table 3, imagine that line isn't there. If the line isn't there, you can see that you have an establishment where there are no pay equity adjustment obligations because all the female job classes are without male comparators; there are no male job classes that are of comparable value to any of the female job classes. It is not an all-female establishment because there are male job classes; they happen to be male job classes that do not line up with any of the female job class values. Again, by drawing a line through or by trying to establish a representative group of male job classes, you can see that you are now able to make pay equity payouts for those female job classes that fall below the line.

Proportional value can be used in two cases. One is where you've got an establishment that already tried to do a job-to-job plan and found that there were some gaps. The other is in an establishment that didn't do any pay equity because there were no male job classes that lined up with any of the female job classes. The wage line is only one among several methods of making proportional value comparisons. It is, however, the most widely used and it's not difficult to understand.

There are other ways of doing it. Mathematical formulations and other ways have been used quite successfully. The choice of method will depend a great deal on the size of the establishment and whether or not job-to-job comparisons for some female job classes are already in place. If they are, proportional value need only be used to fill in the gaps left by the job-to-job method. The obligation to use proportional value and start making adjustments under a plan comes into effect for public sector employers and private sector employers with 50 or more employees, retroactive to January 1, 1993.

Because proportional value is such a widely accepted approach to pay equity, however, many establishments already have pay equity plans that use proportional value. These plans are recognized by the act as being valid from the time they were posted. Employers and bargaining agents who wait for proclamation before proceeding with required proportional value comparisons will have six months after the amendments come into effect to post their plans. The first payment of adjustments will be retroactive to January 1, 1993, but they do not need to be paid out until six months after proclamation. The first adjustment date for small private sector employers—those between 10 and 49 employees—is later, January 1, 1994, the same date as under the job-to-job method.

There are a number of provisions of the bill that deal with the requirements around posting and the content of a pay equity plan containing proportional value comparisons. These provisions fairly closely parallel those of the current act for job to job. I don't propose to go into them as they are fairly straightforward.

I forgot to mention one thing. The employer in table 1 who had posted a job-to-job plan now realizes that with proportional value it doesn't have a finished plan. They had a finished plan from the point of view of job to job; they don't

have a finished plan any more. They have a partially completed plan and it will therefore require them to sit down with the bargaining agent, if there is one, and if not, to sit down and figure out what effect proportional value will have in terms of filling in the gaps. The amendments provide for opening up the plans to insert the female job classes that were missed because there were no male job class comparators.

#### 1040

Let me turn now to proxy. The method of making proxy comparisons is set out in section 13 of the bill, beginning at page 10. As I've stated several times, it will be used only in the public sector and only by those employers and bargaining agents who are unable to use either job-to-job or proportional value comparisons for the reason that they have too few male job classes in their establishments.

Unlike job-to-job and proportional value comparisons, proxy is a complete system. You opt into it because you weren't able to do pay equity using job-to-job, PV or a combination of the two. It is also different in that it is not completely self-administered. Employers and bargaining agents will be required to obtain an order from the pay equity office to use proxy comparisons. They will not simply be able to choose to use proxy comparisons. The pay equity office will issue the order exclusively on the grounds that there are too few male job classes within the establishment for the employer and the bargaining agent to use either job-to-job or proportional value comparisons.

Proxy comparisons begin the same way that job-to-job and proportional value comparisons begin. The employer and the bargaining agent, where there is one, identify the male and female job classes and evaluate them on the basis of a gender-neutral comparison system, using the components of skill, effort, responsibility and working conditions.

Then they select from among the female job classes those that are defined as key female job classes. There are two types of key female job classes. One type is the female job class with the greatest number of employees. The other type is any female job class that is essential to the delivery of the services provided by the employer.

In a child care agency, for instance, the child care worker job class would likely be the largest female job class as well as the job class essential to the delivery of the service. Another essential job class, and therefore a key female job class, might be a cook, but a part-time bookkeeper or cleaner might not be essential and therefore would not be a key female job class.

Once the selection of the key female job classes is made and it's apparent that there are no male job class comparators within the establishment, an order is sought from the pay equity office that the establishment is seeking establishment. It is seeking proxy comparisons and, if obtained, the next step is to select an establishment to provide the proxy comparisons. As I said earlier, the essential and unique feature of proxy comparisons is that they depend on comparisons provided from outside the employer's establishment.

You have before you—and if I could just turn you past table 4; I'll come back to table 4 in a few minutes—a schedule and this schedule will be contained in a regulation to the act. It will direct particular types of seeking establishments to particular types of proxy establishments. For example, a child



care centre, as a seeking establishment, is directed by the schedule to a municipality which operates a child care centre, which would be the proxy establishment.

Seeking establishments will be geographically limited in their search for proxy establishments, usually to their own municipality or county. Once the seeking establishment identifies an appropriate potential proxy establishment, it submits a request for information to the proxy. Included in the request is information about the job content of the seeker's key female job classes, a copy of the pay equity office order identifying the seeker as a proxy user and other information that shows up on page 15 of the bill.

When the proxy establishment receives the request, it must respond within 60 days and provide job content information back to the seeker about the female job classes it has that are similar in function to those of the seeker. In addition, it provides information as to the pay equity job rate of those female job classes. The seeker's job classes thus receive the benefit of the comparisons made in the proxy's pay equity plan between female job classes that are similar to their own and male job classes.

In consultation with employers and bargaining agents, it was generally agreed that this information already exists in usable form within the proxy establishments, as it would have been collected during the development of the proxy's pay equity plan. As a result, this process should not impose a burden on the proxy establishment to gather new information.

Once the proxy has provided the information, its work is completed and it has no further obligation to the seeker. The seeker, now having the information it can use to prepare a pay equity plan, proceeds to do so.

Could I ask you to turn to table 4. Imagine the line isn't there. Imagine the Ps aren't there. If the line isn't there and the Ps aren't there, you have before you an establishment that has five female job classes. It is an all-female establishment. It cannot use proportional value, because there are no male job classes it can use to draw a wage line through. It is in the public sector. If it's in the private sector, it's not obliged to use proxy. So it's a public sector organization, five female job classes.

It has determined that it has three key female job classes. One of those will obviously be the one with the largest number of females in it. The other two are job classes that are viewed by that organization as essential to the delivery of that organization's services.

It sends the information about the three key female job classes over to a proxy establishment, having obtained an order from the pay equity office and having looked up on the schedule what the acceptable proxy organizations are for that particular seeking organization. The proxy organization sends back information about the duties and content of jobs that are similar in function. For the key female job that's at about value 2, the proxy organization was able to identify three jobs that were similar in function. For key female job 4 there was one job that was similar in function, and for key female job value 6 the proxy organization found two jobs that were similar in function.

They sent over information that allowed the establishment, the seeking organization, to determine what the adjusted wage rates would be for those adjusted female job classes that

the information was sent over on. These Ps are female job classes from the proxy organization that have been adjusted up by the pay equity adjustment in that proxy organization. They're already topped up. Then you can do proportional value. Then you can draw your line through the Ps, and the pay equity adjustments are the vertical dotted lines that are required to take the female job classes up to that line.

That's about as simply as I'm able to attempt to explain proxy, but I think it gives you a sense of the role of the seeking organization and the proxy organization.

By the way, if comparing female to female doesn't sound to you like pay equity, remember that the female job classes provided by the proxy have already been compared to male job classes and been adjusted. It was found that attempting to use a male job class directly would be overly difficult. The first challenge would be deciding which one, remembering that the seeker and the proxy will likely have evaluated their jobs using different gender-neutral comparison systems. With the similar female job class providing the connection, the problem of selecting the appropriate male job class comparison is resolved.

Proxy comparisons will come into effect and employers will be required to post plans on January 1, 1994 or six months after the amendments come into force, whichever is later. The rules concerning separate plans for each bargaining unit and for when plans are to be deemed approved are the same as for job-to-job and proportional value comparisons. The requirements for what must be included in a proxy pay equity plan are somewhat different.

There is still a bit that I'd like to cover. I've covered the two methodologies. It would take me about 10 to 15 minutes to finish going through the other amendments. Mr Chair, I'm in your hands as to whether you'd like me to proceed and go through the others. I think it's important that at least I have taken you through the methodologies, but I'm happy to finish off if you wish.

1050

**The Chair:** We still have some briefings left to go, and I'd like to allow as much time for the committee members to ask questions and make comments, so possibly we could skip by these and let them read them at their own leisure.

**Mr Thomas:** If I might then—

**The Chair:** Maybe some highlights.

**Mr Thomas:** —members of the committee, just go through some highlights. You've all got my text, so page 21—Mr Lessard has already talked about the crown as employer and Kathy Bouey will talk to you more about it.

Under (b) is that there be a—

**Ms Poole:** Sorry, page 21 of the legislation?

**Mr Thomas:** Of my text. I'm sorry.

**Ms Poole:** My briefing notes only go to page 14 for your text, so I wondered if—

**Mr Thomas:** Sorry, page 11. I apologize. I've been going through double-spaced. Page 11.

**Ms Poole:** Thanks.

**Mr Thomas:** (a) is the crown as employer; (b) is a requirement for small employers, private sector ones, to post; (c) enables the government to potentially define and limit the



maintenance obligations; (d) changes the deadline for achieving pay equity; (e) is the provisions for sale of a business to make sure the purchaser takes the pay equity plan, as well, that was with the vendor company; (f) is a procedure for revising the pay equity plan in the case of a changed circumstance; (g) is minor, and I'll just skip over it.

At the bottom of page 12: Currently, the authority of a review officer to issue orders dealing with contraventions of the act that are not directly related to pay equity plans is confined to contravention of the obligation to achieve pay equity. The review officers don't, for example, have the authority to deal with the reprisal complaints; those go directly to the tribunal. The amendments will broaden the scope of the review officer authority and potentially reduce the number of cases that must be dealt with.

Paragraph (k) gives statutory foundation to the tribunal's current practice of holding a pre-hearing conference.

If I can assume that the rest of my comments are on the record by virtue of being part of the text, I'd like to end by showing you one last chart. The last page of your table hand-out following the schedule that shows the proxy organizations is a chart called pay equity dates. I think you may find this chart of assistance to you as the week goes on in terms of looking at what the various dates are.

The first column describes the type and size of the employer. There is, of course, the public sector and then there are varying sizes of private sector employers. They are set out differently because they have different timing obligations. The public sector has three methods of pay equity. The private sector has two methods and they are set out there. They're set out because they have different posting and adjustment dates. Down the third column are the posting dates for the public sector and the private sector, depending on what type of pay equity the organization has chosen to use.

The next column shows the first adjustment dates, depending on whether the organization is public or private sector, whether it's using job-to-job, PV, or proxy.

The last two columns indicate the completion date for pay equity and, as you can see, the only organizations set out to have a completion date are those in the public sector and only those in the public sector who use job-to-job and PV. If they use job-to-job and PV, they are required to complete pay equity by 1998. If the public sector is using proxy, it is in no different position from a completion date point of view than the private sector. It is open-ended, provided they spend at least 1% a year on pay equity. That concludes my comments.

**Ms Kathy Bouey:** I'm Kathy Bouey, assistant deputy minister, broader public sector labour relations secretariat.

Bill 169 serves two purposes. First, it gives effect to the new prohibition proposed in Bill 102 against the government being declared the employer of people working in independent agencies in the broader public sector. Second, the bill will stop the confusion, and the potentially high cost, of deeming broader public sector workers as employees of the province. It ensures that the provincial government will still be able to manage the growth and cost of the public service responsibly.

This bill contains only five sections, which I will review briefly before we take your questions.

The first section amends the definition of crown employee and gives the government the express right to decide who is and who is not employed by the government as a crown employee, public servant or civil servant. The new definition does not affect people who work directly for the crown, either in ministries or on appointment by the Lieutenant Governor in Council; they are still crown employees.

But for people working in crown agencies, the definition means they can only be crown employees if their agencies are designated in the regulations. That is, just working for an agency that is funded or largely funded by the provincial government will not automatically mean you are a crown employee. As a result of this provision, a tribunal won't be able to make a finding of crown employee status based on the financial or operating relationship between an organization and the crown.

This section also amends section 8.1 of the Public Service Act so that civil servant, public servant and crown employee status hinges on being expressly appointed by people and bodies authorized to do so; for example, deputy ministers.

It also provides that the government may further restrict the application of civil servant, public servant or crown employee status by regulating a form of appointment as a requirement for status. This will give the government a course of action if the courts or tribunals interpret the term "expressly appointed" so broadly that it includes people the crown did not intend. If circumstances warrant, this will be proceeded with under the regulatory power described in the bill.

The second section of the bill amends the Crown Employees Collective Bargaining Act to ensure that the Ontario Public Service Labour Relations Tribunal is bound by this legislation and its regulations.

Under sections 3 and 4, Bill 169 will take effect retroactively to December 18, 1991, the day it was introduced in the Legislature. The existing Public Service Act will apply to applications for crown employee status that were before the public service labour relations tribunal as of that date, but it will not apply to those that come after. This provision has been included to provide a clear signal of the government's intent to assert control over the determination of crown employee status immediately from the date of introduction of this bill.

The fifth section sets out the title of the bill.

Now let me make a brief comment about the draft regulations Wayne Lessard tabled today. This list was drawn up after four months of consultations with legal and human resource directors in all ministries. It sets out the identity of all agencies that will be considered crown agencies for the purposes of defining crown employee status.

You should also note that the regulations don't include Ontario Hydro and the Ontario Northland Transportation Commission. This preserves the current position of their workers. Under current legislation, they're exempt from crown employee status. Now we would be happy to take your questions.

**The Chair:** Thank you very much. We have an hour left this morning, so what I'd like to do is offer 15 minutes for each of the caucuses for questions and comments and then go back for one final round of five minutes.

**Ms Poole:** Mr Chair, just to begin with a question for you, when the schedule was originally sent out, three hours were allocated for ministry staff and the minister on Monday and Tuesday. Now that's been cut back to two and a half hours. Quite frankly, 15 minutes won't begin to touch the time we need for questions, so I'm wondering if we can perhaps extend till 12:30 or else bring them back.

**The Chair:** I'm in the hands of the committee—understanding that there are certain scheduling factors here from the committee—as to whether we should extend till 12:30.

1100

**Mr David Winninger (London South):** I'd prefer not. In my own case, for example, we already have some meetings scheduled at 12. I thought that was the understanding. So I'd prefer that it not go till 12:30.

**Mr Alvin Curling (Scarborough North):** Bring them back.

**Ms Poole:** The first time I received notification that the agenda had changed was at 9:15 today, and I am the critic for women's issues for our party.

**The Chair:** That was the same time I found out, too.

**Ms Poole:** I really just don't think 15 minutes is adequate.

**Ms Sharon Murdock (Sudbury):** If it might help, we could defer our time and allow the opposition to utilize it.

**The Chair:** Would that be agreeable, a half-hour for each of the two opposition caucuses?

**Ms Poole:** Okay, fine.

**The Chair:** Okay. Ms Poole.

**Ms Poole:** In view of the time constraint, I think we'll delay any comments. Normally, the official opposition and the third party have an opportunity to respond to the minister's comments, but I think we'll delay those till clause-by-clause.

I'd like to start with some questions for the Minister of Labour. I am actually quite astounded by the gall of the minister. If a third party were to come in and look at his comments, he would think that the NDP caucus and the NDP government created pay equity and put in the pay equity legislation in 1987, and that the first mention of extending pay equity came with this government. In fact, nothing could be further from the truth.

It was the Liberal government that brought in the Pay Equity Act, 1987. In fact, it was the Liberal government that had the sole responsibility for policy development that brought in the pay equity legislation, without input from the NDP. In fact, all the NDP did was carp. So I wanted to state that.

**Mrs Caplan:** And criticize.

**Ms Poole:** I wanted to state that very clearly for the record.

Secondly, I was actually quite surprised. Mr Thomas gave us a very good in-depth briefing and mentioned the fact that the Pay Equity Commission had come forward with a very comprehensive proposal for extending pay equity. But through sheer oversight, I'm sure, he didn't mention that in March 1990, the Minister of Labour at the time, a Liberal Minister of Labour, announced that the Liberal government would be proceeding with extending pay equity to approxi-

mately 350,000 women through the proportional method. I'm sure that was just an oversight.

I want to talk to the minister about the delay. He has made this statement on page 5, and I'll read from the written text: "At that time, some casual observers," whoever they are, "suggested the government had put its commitment to pay equity on hold for three years. Nothing could be further from the truth."

Mr Minister, I think we could actually extend that—maybe you're right—because your commitment to pay equity supposedly began in the fall of 1990 in the throne speech, and yet we saw nothing happen for a full year.

**Mrs Caplan:** Nothing.

**Ms Poole:** Absolutely nothing happened.

Finally, in December 1991, you introduced pay equity legislation, but then it just kind of died on the order paper. It was not brought forward. There were no public consultations announced. In fact, when I read your comments about having several models of proxy comparison and how the first model was developed and tested in consultation with stakeholders, we heard nothing of that, absolutely nothing. When we demanded from the minister his comments about why this government was delaying and why you were not coming forward with pay equity, it wasn't even mentioned that you were doing this in secrecy, complete secrecy. Now, apparently, you have a second, more workable proxy model which was created in 1992. We've heard nothing of that either.

I'd like to know from the minister: If in fact you have delayed from 1995 to 1998 the completion date for pay equity in the public sector, how can you possibly say that you have not put pay equity on hold for three years? How can you defend that?

**Hon Mr Mackenzie:** Number one, I don't think that we've put it on hold for three years.

**Mrs Caplan:** You can't add.

**Hon Mr Mackenzie:** We've extended the time frame to which it will apply over that period of time. We have extended the additional proportional and proxy by one year, and that is due, I can tell the honourable member, whether she accepts it or not, to the financial constraints that we find ourselves in in the province of Ontario.

I can also tell her that I'm sorry if she's a little bit peeved about the comments, but we acknowledge that the original act came in in 1987, and it was under, I believe, her government. I could also remind her, of course, that it was part of the accord that we worked so hard on as one of the conditions that we would support them.

**Ms Poole:** There were two parties to the accord, weren't there?

**Mr Thomas:** Could I just make a point of information, Ms Poole? I think there were a fair number of public consultations on proxy that occurred over the last couple of years involving a number of organizations, as many as 40 organizations, and I think that part of the problem, quite frankly, has been trying to find a workable model of proxy, for proxy took some time.

**Ms Poole:** Minister, just to follow up on that, is it not true that if you had brought in Bill 168 when you said you



were going to, you wouldn't even have needed to make the sections regarding proportional retroactive? You've put it retroactive to January 1, 1993, and yet at this stage we're still in committee after second reading of the legislation. It has to go through third reading and proclamation. Then employers have six months in which to work with this legislation before they're compelled to comply. So you're basically, for all intents and purposes, going to say to employers that the legislation will be retroactive a full year, that they have to come up with that money, and yet there's been no preparation.

I have heard the deputy minister mention the consultation and I accept his word that it has taken place, but I can tell you, it was certainly not very public, nor very visible. I would like to know what their consultation was with the private sector, because a vast number of those employees affected are in the private sector. You are legislating that retroactive to January 1, 1993, the private sector will have to pay these moneys out, and yet you've told us nothing about how you've prepared anybody for what you're doing. Minister, could you address that, please?

**Hon Mr Mackenzie:** Yes. I can tell you that as the deputy indicated earlier, there has been extensive consultation, with one or two exceptions that I won't go into here today, probably more consultation on this than on most items that we deal with.

The proportionate value will cover both private and public sector, and the proxy is entirely in the public sector. I'm just simply telling you that there has been extensive consultation on this, and most of the stakeholders and parties know that because they've been involved in it.

**Mr Thomas:** I think it's also reasonable to presume that most private sector organizations that have been thinking about proportional value and wondering about it have known that something was coming, certainly since Bill 168.

**Ms Poole:** I have one more question, then I'd like to turn over the questioning to Ms Caplan and Mr Curling, who I'm sure have a number of questions.

According to the Ontario Coalition for Better Child Care, the first payouts they'll see from this government's pay equity will be 1995. Lo and behold, Mr Minister, 1995 is an election year. Isn't that a surprise? The payouts will come in an election year, and yet the payment for those payouts will be borne by any successive government, and all indications are that it will not be an NDP government that will have to take the deficit burden. Would you like to discuss that portion of your exquisite timing?

**Hon Mr Mackenzie:** I think it's a coincidence, not an exception—

**Ms Poole:** Oh, a remarkable coincidence.

**Hon Mr Mackenzie:** —and I must say that I don't agree with the member's comment on who will have the responsibility following the election, because I think it'll be back in the hands of this government.

**Ms Poole:** I think the minister lives in some sort of dream world, but I guess he's entitled to his fantasies.

**Hon Mr Mackenzie:** At least it's based on 18 years here, I can say to the honourable member.

**Ms Poole:** And two very deadly years in government.

1110

**Mr Thomas:** Could I just follow on to the minister's answer? I believe there was a wage enhancement to that sector in 1991 of \$2,000 a person, and if I recall correctly, the proportional value, or PV payouts will be six months after the proclamation date, which could well put them in 1994, and they are retroactive. When the payout does happen, it is retroactive to January 1, 1993.

**Mrs Caplan:** I would like to ask a couple of questions as they relate first on Bill 169. I found parts of that actually quite interesting. As you know, I spoke at some length in the Legislature on the provisions of this legislation, and I think it should be pointed out and the question I would ask is for clarification that this has implications far beyond pay equity. This piece of legislation not only amends for the purposes of pay equity but the quote is "and any other reason." I'd like to pursue that a little bit as well. Is that correct?

**Ms Bouey:** I believe it does affect determinations that might be made by the public service labour relations tribunal as to who is the employer for, for example, collective bargaining purposes.

**Mrs Caplan:** There are three cases that come to mind that I'd like you to discuss with me, if you would. On the first page of your regulations made under the Public Service Act, I found it quite interesting that you have as number 18 McKechnie Ambulance Service. That reminds me of a determination that was made by the tribunal which I believe in fact is the rationale for this whole amendment, but I find it interesting.

I know the previous government declared all ambulance workers who worked for private agencies providing this service as technically crown employees for the purposes of collective bargaining. The previous government did that. I believe this regulation made under the Public Service Act designating agencies puts in place by regulation that which was announced by policy. Is that correct, or does this go further?

**Ms Barbara Sulzenko:** There are 31 ambulance services that have been declared by the public service labour relations tribunal to be crown agencies, and those agencies are mentioned in this draft regulation. Any other ambulance services that have not been found to be crown agencies under CECBA are not included at this point in the regulation.

**Mrs Caplan:** And what is your intention?

**Ms Sulzenko:** There has been an examination of governments in the ambulance sector by a labour relations expert, Mr Swimmer, under the directive of the Minister of Health. That report is now in. It's under review by the government and no decisions have been taken.

**Mrs Caplan:** By the way, McKechnie had nothing to do with pay equity. Is that correct?

**Ms Sulzenko:** That's right, as far as I understand it, yes.

**Mrs Caplan:** If this legislation had been in place, what effect would that have had on the McKechnie Ambulance decision as made by the labour relations tribunal?

**Ms Sulzenko:** It would have prevented the declaration of McKechnie as a crown agency and its employees as crown employees.

**Mrs Caplan:** And I'd repeat again, that had nothing to do with pay equity.

**Ms Sulzenko:** That's correct.

**Mrs Caplan:** It has also been the position of OPSEU in its negotiations with the government to expand the definitions of what are crown agencies. Was it not their stated intention to proceed with other crown agencies; having had the McKechnie decision, to attempt to use that as a precedent?

**Ms Sulzenko:** McKechnie did give rise to another 30 ambulance services being declared to be crown agencies.

**Mrs Caplan:** Just to clarify once again, this legislation which is before us today under the guise of pay equity has much broader-reaching implications than simply pay equity and would have nullified the McKechnie decision if it had been in place at that time?

**Ms Bouey:** If I could just clarify, if McKechnie had not been listed as a crown agency, it would have nullified it, yes.

**Mrs Caplan:** The second question I have is the case of Kingston-Frontenac. I think that was a children's aid society.

**Ms Sulzenko:** Yes.

**Mrs Caplan:** Could you tell us the status of that case?

**Ms Bouey:** The government has indicated its intention to judicially review that case. A decision in favour of the government being the employer for pay equity purposes was made by the pay equity tribunal.

**Mrs Caplan:** What will be the effect when this legislation's passed retroactive to December 1991 on that case?

**Ms Sulzenko:** It will have no impact on that case because this legislation exempts from the application of this bill those situations that were in front of the Pay Equity Hearings Tribunal as of the introduction of the bill in December 1991.

**Mrs Caplan:** If this legislation had been in place at that time, what would have been the effect on that case?

**Ms Sulzenko:** Kingston-Frontenac could not have been declared a crown agency and its employees crown employees for the purposes of pay equity.

**Mrs Caplan:** The third case is the Haldimand-Norfolk case. Could you review the status of that case, please?

**Ms Sulzenko:** I have reviewed your remarks during second reading and I'm not sure exactly what you referred to in the case of Haldimand-Norfolk. As I understand in the case of Haldimand-Norfolk, the police were declared to be employees of the municipality and would not be affected by this legislation.

**Mrs Caplan:** Could you clarify that again? It permitted the nurses to be compared with police?

**Ms Sulzenko:** That's right, but only by virtue of the police being declared to be employees of the municipality as opposed to being employees of the police commission.

**Mrs Caplan:** I think it went a step further actually. I think that the nurses were declared employees of the municipality as opposed to being employees of the health unit. Under the Health Protection and Promotion Act, the nurses are technically employees of the public health unit and the challenge by the nurses' union was that the nurses should be able to be declared municipal employees.

I ask that you check that so we could have some discussion about what the implications of this legislation will be on those kinds of situations and, again, what it would have been on that case and as a precedent for other female-dominated categories.

**Ms Sulzenko:** We'll do so.

**Mrs Caplan:** Good. Thank you. How much time is remaining, Mr Chair?

**The Chair:** About 12 minutes.

**Mrs Caplan:** I'd like some clarification. On page 4, you refer to a loophole through which pay equity review officers and the Pay Equity Hearings Tribunal could name the province as the employer. Could you define what that loophole was?

**Ms Sulzenko:** The existing legislation does not define "the employer" for the purposes of pay equity and, as a result of the absence of that definition, it has been impossible for the pay equity office and the hearings tribunal to make a declaration as to who is the pay equity employer. This is one of the objectives of the government in seeking to ascertain the right of only the government to determine who is a crown employee or a government employee for the purposes of pay equity.

**Mrs Caplan:** I guess the question that I have is—you defined it as a loophole.

**Ms Sulzenko:** I think the word "loophole" is really referring to the fact that it wasn't the intention of the legislation at the time to result in numerous employees of independent agencies in the broader public sector becoming public servants; it was the purpose of that legislation simply to ensure that people are able to achieve pay equity. In so far as if left unremedied it could lead to many employees being added to the ranks of the public service, it is in fact a loophole because it was not intended by the legislators at the time.

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**Mrs Caplan:** How is that different from what exists today in CECBA for those such as the ambulance workers and so forth who had been pressing and making their case under the existing legislation to have themselves declared crown employees as in the McKechnie Ambulance decision? Would you have called that a loophole as well?

**Ms Sulzenko:** I think the parallel is an apt one because certainly it was not an intention of this or previous governments that numerous employees of broader public sector agencies would become public servants.

**Mrs Caplan:** The next question I have has to do with the initial phase-in and so forth. My question I guess would be to the minister or the parliamentary assistant. Would you say that this legislation, which removes the obligation of the broader public sector, ie, the government as the payor, to complete the pay equity adjustments within a time frame—it removes that time frame—is therefore weakened by removing that time frame for the completion of pay equity? Would you say the previous legislation that was in place was more onerous on the government?

**Mr Thomas:** If you were referring to me, I'm the Deputy Minister of Labour, not the parliamentary assistant.



Secondly, I don't think it substantially changes the concept. It simply makes it more fiscally affordable by extending it out over three years. I don't think it changes the commitment level to pay equity, because there still is a completion date. The completion date has been moved back from 1995 to 1998. The only part of the public sector pay equity that does not have a completion date is the proxy methodology, which is the same as the private sector and goes on for ever.

**Mrs Caplan:** Could you table any of the analyses and studies of the proxy model that you studied so that we could have some indication, since you've raised the issue, of affordability and fiscal responsibility as it relates to the use of the proxy comparator? I'm assuming that you have extensive studies on what the effect of that will be on the broader public sector. Could I ask that it be tabled today, if you have it?

**Mr Thomas:** I'd like to look into that. I know that we have a consultation document, which was shared with people, and as to what is the most appropriate proxy organization and why and why don't we look at what we can do there.

**Mrs Caplan:** Let me put my concern out so that you can hopefully address it. It's my understanding and assumption, given the knowledge I have of the proxy method, that it could prove to be very costly. What we have seen has been limited transfer payments by this government and in fact a lessening of the support for pay equity adjustments by the government due to the economic mess it's created by its economic policies.

The problem I have is that we have seen layoffs. Nurses are losing their jobs, child care workers are losing their jobs, women are losing their jobs because of the inadequate transfer payments of this government. Unless there's a commitment that the transfer payments will be adequate and the pay equity adjustments will be adequate, your proxy comparator could just result in job loss in the province, particularly among those who are most vulnerable and at the lowest end of the wage scale in those very agencies that are going to be affected by this legislation because of the inadequate support from the provincial government.

I'd like to see the analyses to satisfy myself that this will not occur and that the government will be able to afford to support what I think would be potentially expensive in the area of proxy comparison. That's the purpose. I would ask that those studies be tabled because I don't think that we can consider this proposal without seeing the economic studies and the impact and cost analyses.

My colleague would like to use the time remaining. How much time is left, Mr Chair?

**The Chair:** There are six minutes left.

**Ms Bouey:** May I just respond to a couple of the points there? First of all, the proxy provisions in the bill require an expenditure of a minimum of 1% of payroll, but they do not oblige the employer to make more than 1% of payroll per year. Secondly, the government has indicated its intention of funding 100% of proxy costs subject to some guidelines which will be released in time for agencies to be able to figure out what is included in that plan.

**Mrs Caplan:** I guess the concern I have is that this NDP government has not funded 100% of the pay equity expenditures that have been experienced to date. I know there's a lot of mistrust, because on the one hand the transfer payments

are not even sufficient to cover existing costs and the effect in the broader public sector has been devastating as services have been cut, so the promises of—in 1995 and 1996 and 1997 and 1998 when, who knows, most of us suspect this NDP government will not be there, commits future governments in a way which I think is fiscally irresponsible, unless we see the analyses that show that it's affordable.

**Ms Bouey:** I think the situation is that because the pay equity plans are being done on such a decentralized basis—there's just no sort of central filing of it, if you like—we don't really know exactly what the pay equity costs to be incurred in a specific year will be. An allocation is determined and then distribution is done on the basis of that allocation for job-to-job and proportional value. It bears in mind the historical rate of support that these agencies have received. But for proxy the commitment has been made: It will be 100%, subject to guidelines, of what's included.

**Mrs Caplan:** I find the statement is unbelievable, that the government doesn't know what the cost is going to be from year to year.

**Ms Bouey:** The government knows the costs of maturity, but the exact pace of the plans will depend on agreements that are reached between employees and their employers and so on, and there's no way of predicting that.

**Mrs Caplan:** Thank you. With the four minutes remaining—

**Ms Poole:** I had two final questions. The first refers to the exemption under both the Pay Equity Act, 1987, and under Bill 102, which doesn't change that, the exemption of businesses that have fewer than 10 employees.

At the time that pay equity legislation was passed, the NDP opposition was extremely critical of this. In fact, both Brian Charlton and Evelyn Gigantes, who are ministers under this current government, ridiculed and lambasted the Liberal government of the time for not including them. The Liberal government had said it would put an onerous burden on small businesses. Secondly, in small businesses, quite often they didn't have specific job roles and many of the people did all the jobs and it would be extremely difficult and extremely onerous on small business.

I would like to know, Mr Mackenzie, since your caucus has been officially on the record for a number of years as including businesses with fewer than 10 employees, why is it not in Bill 102 and why was it not in Bill 168?

**Hon Mr Mackenzie:** I can tell you first that the issue of businesses with nine or fewer employees will be assessed again in 1995.

**Mrs Caplan:** Another election promise.

**Hon Mr Mackenzie:** I can tell you that in the interim, with the legislation that's before us here today, we have added 420,000 women who were not covered under the bill that came in in 1987, and I think that's an indication of process and progress. Also, I can simply say that we have had to deal with a financial problem in the province of Ontario and there's no question that's part of the reason for some of the changes in timing.

**Ms Poole:** It's nice to hear that the minister was wrong in his initial assessment of whether small business should be

included. Just for the minister's information, as I'm sure he has forgotten, a Liberal Minister of Labour announced in March 1990 that the Liberal government would be proceeding with bringing an additional 350,000 women under the act, so I don't think you can take the credit that you are.

Relating to the remaining women—

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**The Acting Chair (Mr Will Ferguson):** Thank you very much, Ms Poole. Your time is up. It's 11:30; you started at 11 o'clock. Over to the Conservative caucus, Mr Tilson.

**Mr David Tilson (Dufferin-Peel):** I don't want to get into a debate on this subject as to whether this was a Liberal idea or whether this is an NDP idea. I'll let the two of you decide that.

Mr Mackenzie, through you, Mr Chair, you commented—at least I believe it was you who commented—in your remarks on the recent statistics that were put forward by Statistics Canada on women's pay coming closer to men's. There was a news clipping which I have before me of the *Toronto Star*, January 15, which refers to nationally women earning about 69.6% of what men earned in 1991, which is up from 67.6% in 1990. It indicates that the wage gap has diminished gradually. In fact, the National Action Committee on the Status of Women says that this is at a snail's pace, that equal pay for work of equal value would take for ever, the way things seem to be moving.

The statistics were given for the province of Ontario in this same report of Statistics Canada. It states that in 1991 women earned 69.8 cents for every dollar made by a male counterpart, but that Ontario men and women recorded the highest average earnings, and then it lists what that is.

Mr Minister, this legislation, the existing legislation which we have in the province of Ontario, which has been pay equity legislation, is unlike any other Canadian jurisdiction. I guess my question is, why is the increase so gradual? Comparing it to other jurisdictions across this country, with this legislation, why aren't things moving any faster—that's not quite true, but marginally faster—than they are in jurisdictions which do not have the legislation Ontario has?

**Hon Mr Mackenzie:** I presume from your question that like myself, you'd very much like to see it move much faster, and I'd have no difficulty with that if we were in a financial position to do it. I think what we're dealing with are the realities of the current economic situation.

**Mr Tilson:** My question is, what's wrong with our legislation? Why is it only moving, to use Ms Maureen Leyland of the National Action Committee on the Status of Women—she's referring to it on a national level, but I'm sure her comments would refer to it on a provincial level as well. Why, with this legislation that we have in the province of Ontario, is it moving at only a snail's pace, to compare it to provinces that don't have our legislation?

**Hon Mr Mackenzie:** I can't verify your figures. You may or may not be right.

**Mr Tilson:** Statistics Canada is what I'm referring to.

**Hon Mr Mackenzie:** It's moving and it's moving in the right direction and I think that's important. But we're also dealing with a province, as you know, that's been harder hit

than other province in terms of a number of factors that we deal with financially. What we are trying to do is to meet the goals of the Pay Equity Act in as responsible and quick a manner as we can. What we have come up with at the moment is a direction that keeps us going in the right direction.

**Mr Thomas:** Could I just follow on that, Mr Tilson, for a minute? First of all, it's important to recognize that even if one achieves pay equity at maturity, one does not necessarily eliminate the gap. The 30% figure or the 30-cent figure you're talking about does not disappear completely, because there are other factors that contribute to the gap besides the kind of systemic problems that the Pay Equity Act is aimed at solving; for example, the length of service in the workforce, the kind of training etc that are available to women. Those are the kinds of factors that would say that even if you achieve complete pay equity, you would not end up having wiped out the total gap that we're talking about here.

My second point would be that the Pay Equity Act has, in effect, set up a regime of payouts that has put the heaviest obligation on the public sector and then decreasing obligations on the private sector, decreasing in terms of the size of the company. I gather those were done for purposes that were related to the economic viability of business, giving the smaller businesses more of a chance to get ready for, prepare for and fund pay equity.

**Mr Tilson:** I guess my question is just simply an obvious one and that is that considering the increases have been marginal compared to the rest of the country—really, provinces that do not have this legislation—is the legislation working? You're now expanding on this legislation. You're expanding on legislation that, maybe suggested particularly by some of the women's groups, isn't working the way it should.

**Mr Thomas:** I think it is working the way it should. There have been—

**Mr Tilson:** No. Statistics Canada, sir, says it's not, that it's no different from provinces that don't even have this legislation.

**Mr Thomas:** I think the provinces are different too, Mr Tilson. I don't think even those who think we may be moving too slowly would tell you that they don't want to proceed with the legislation.

**Ms Bouey:** Can I just clarify that you're talking about 1991 data, I believe. I think it's important to remember that even for the public sector, the first payments didn't have to go out till 1990 and that the obligation was a bit later for the private sector.

**Mr Tilson:** I'm talking about 1987 legislation and I'm talking about the most recent—

**Ms Bouey:** But the 1987 legislation required pay equity plans to be posted by 1990, but the payouts were actually not required to begin till 1990.

**Mr Thomas:** And only posted in the public sector and the larger private sector. There are still employers in the private sector who do not have an obligation to post. I think January 1, 1994, is the last posting date for the smaller employers, who may in fact have a large percentage of the workforce.

**Mr Tilson:** I listened to you, I listened to your presentation and I'm watching these charts you've been preparing,



these tables, and I appreciate your comments that you have tried to make this as simple as possible for us to understand. I say to you that this process is very difficult to understand. Maybe I'm alone. Maybe other members of the committee find it very easy to understand this process and what you're saying. Maybe we're alone.

I guess my question to you is, if I am right that this process is very difficult to understand philosophically and to interpret, I am sure there are going to be women across this province who, like me, will find it difficult to understand. How are these women, and I, going to better understand what in the world you're talking about?

**Mr Thomas:** I think the tables probably become more complicated as you move from table 1 to table 4. I would hazard a guess that table 1 was complicated and difficult to understand when the legislation was introduced in 1987. I would think that most employers out there are now fairly comfortable with the job-to-job system that's set out in table 1, and that's because they've learned to live with it.

The commission has done a lot of work in terms of education and outreach and training, and I would expect that a similar situation will unfold with respect to proportional value and proxy, that there will be a requirement for and a capacity by the office to do a lot of education and training to make sure that people do understand how the other two methods work.

**Mr Tilson:** I say to you that this is very heavy on a bureaucracy and that it's going to cost someone—business, the employer—a lot to understand this. They have an obligation, according to the legislation being put forward, to make sure the employees, the women of this province understand it. Someone's got to pay for this. Someone's going to be paying high-priced consultants to explain this to us. It may well be that I'm wrong because this is easy to understand. I don't think I am; I think I'm right that it's very difficult to understand. So on that assumption, my question to you is: What educational program does the government have to put forward so that the employers, the employees, the women of this province can understand what in the world you're talking about?

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**Mr Thomas:** The first point is that I think the private sector employer never has to learn about proxy; we start with that. So the private sector employer doesn't need to learn table 4. The private sector employer needs to learn what the principles are behind tables 2 and 3. I come back to what I said before: The pay equity office has done an excellent job over the past few years in putting out guidelines, directives and information circulars. I believe they're going to be talking to you later this week and you'll have an opportunity perhaps to ask them what they've done, because they've done a very excellent job of educating the province on job-to-job and I'm sure they will do the same thing with respect to proportional value.

**Mr Tilson:** Can you provide this committee with the cost to the government of pay equity, to implement the pay equity from 1987 to now?

**Mr Thomas:** Yes, and perhaps Kathy can help me, but my recollection is that the Ontario Public Service's pay equity

plan, which I'm familiar with, cost the government about \$120 million. That was about 3.5% or 3.6% of payroll. In 1991-92 the government paid about \$47 million in pay equity costs to the broader public sector against a target of \$75 million and I believe this year the government has allocated up to \$240 million for pay equity going into the broader public sector. Until the surveys are in and the cheques are cut we won't know exactly how much of that \$240 million will actually be spent.

**Mr Tilson:** I'm going to ask the question again. I know it was asked, but it seems logical; you're getting us into something and you must have some idea what it will cost. What is it going to cost the taxpayer of this province to implement these pieces of legislation?

**Mr Thomas:** The cost really over time hasn't—the end rate hasn't changed. The government committed to spending \$1 billion at maturity for pay equity in the public service and the broader public sector. The government remains committed to spending that \$1 billion. It will be extended out, though, over three more years.

**Mr Tilson:** What's it going to cost next year?

**Mr Thomas:** I don't know.

**Hon Mr Mackenzie:** I don't think you can come up with that figure hard until we know what the information is that we get back from the survey and what some of the payments are going to cost us.

**Mr Tilson:** Are you telling me that you have no cost analysis, that you're getting us into something with no cost analysis? Is that what you're telling us?

**Hon Mr Mackenzie:** No. What I'm telling you is that right from the beginning of this, the figure of \$1 billion to maturity was used. That's still the general outline of what we're involved in, and of course we can measure that against whether or not we should be proceeding with pay equity. I'd be interested in knowing if that's your position, Mr Tilson.

**Mr Tilson:** You're answering the questions, Mr Minister. You're the one who's putting these pieces of legislation forward, and we're entitled to know—you're getting us into something—what your information is, if you have any, as to what it's going to cost the taxpayer of this province. If you have no idea, that's fine. You've told us that.

**Mr Thomas:** Mr Tilson, if I can just respond further, the costing that went into Bill 168 suggested that for 1993 and 1994 the expenditures would be something in the \$650-million range, leaving out the Ontario Public Service, which has already been completed. The delays that have been put in through Bill 102 would substantially reduce that commitment.

**Mr Tilson:** I have one more question, Mr Chairman, and then I think Mr Arnott has a few questions. This delay, or whatever terminology you want to use—I guess this may be a question to the minister or whoever wishes to field it, but it's a policy question so perhaps it would be more appropriate to the minister. The delay—and the Treasurer has said we have to delay it because of the financial problems this province is in. I understand that; we all understand that. The difficulty is business and industry, and you have taken great pride in talking about the partnership you were forging with business and industry. You've taken great pride in boasting about that. I

don't agree with you, but that's what you've said. Business and industry in this province, Mr Minister, as you know, have been devastated by this recession we're in, but there have been no changes by you to their obligations—none. Do you not feel that business and industry are having the same problems as government?

**Hon Mr Mackenzie:** I would point out that we've extended the period of time. We haven't decided that we're not proceeding. I think the difference is that we've made the decision that this is a fundamental issue that's important to the people. There is an issue of fairness here. I think we'd have a hell of a time, for example, saying that we're going to pay women members of this provincial Parliament 70 cents on the dollar as to what the men are getting, and I'm not sure that doesn't apply to almost every other occupation.

**Mr Tilson:** Mr Arnott will have some questions on that topic which I think you'll find interesting.

I guess my question is that in effect you're creating an inequity. You've got one group of women in the public sector and one group of women in the private sector, and there's an inequity there. Whatever you're doing—I don't want to play with the words you're saying—the fact is that one piece of legislation is taking effect now and one piece of legislation has been delayed, adjourned, put on hold, whatever wording you want to use. The fact of the matter is that you are creating an inequity between groups of women in this province. Would you comment on that?

**Hon Mr Mackenzie:** I don't agree with you. We've decided that in the public sector we've extended the time period over three years. There is still a requirement in the private sector as well as the broader public that there's 1% a year going into it. Whatever they're going to be able to achieve, there has not been a time frame set on the private sector.

**Mr Tilson:** I'm afraid the women in the business and industry sectors do not agree with you, Mr Minister.

**Mrs Caplan:** They feel betrayed.

**Mr Tilson:** Mr Arnott has a few questions.

**The Chair:** You have about 12 minutes left.

**Mr Ted Arnott (Wellington):** Minister, we welcome you to this committee today. I'm very privileged to be here on behalf of the people of Wellington to represent their views today.

When I speak to people about pay equity in the riding of Wellington, I find that many people's understanding of pay equity is that pay equity means, for all intents and purposes, equal pay for equal work. What you're talking about here with your definition of pay equity is something very, very different: equal pay for work of equal value. Of course, what it means is the government taking the initiative to step into the relationship between employers and employees to make a value judgement on the pay packets that employers have been giving out, assessing them and indicating what they should be changed to. It's a very, very different concept than equal pay for equal work.

I'm interested in the cost projections you have put forward for the cost of pay equity implementation. In doing a bit of research on this prior to coming to the committee, I find that in the Agenda for People, the campaign document you

ran on—I believe you were the critic for the Ministry of Labour immediately prior to becoming minister when the NDP was elected—there was a cost attached to the full implementation of pay equity so that all women in Ontario would be within pay equity legislation. The cost figure that was put in that document was \$60 million. I think you were the critic at the time. How was that figure established?

**Hon Mr Mackenzie:** Somebody's going to have to go back to the figures of the document. I can't remember using the cost of \$60 million at any time in the pay equity legislation. To achieve pay equity—I think that's the goal—it's going to cost a heck of a lot more than that. I don't think anybody has ever argued that you're going to do it for \$60 million.

**Mr Arnott:** It certainly is. I also know that the Premier, almost a year ago to the day, was quoted in the Globe and Mail on January 17. The headline was, "Restraint Won't Affect Pay Equity, Rae Says." His quote is, "I think it's important to send a clear signal that even in the toughest of circumstances, we're not going to forget the social justice agenda." A year later, you're arguing that it is simply being delayed, that the government's commitment is still there, but in fact there is a strong possibility that the New Democrats will not be in power by 1998 and you're not going to be able to continue to see this commitment through which you say you've made for yourself.

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Given the Premier's, I would think, considerable embarrassment at this statement that was made about a year ago, I would think that before proceeding any further, it would be sensible politically for you to undertake a full-cost assessment of pay equity so that you can put that out in the public domain to explain to people what it's going to cost.

**Hon Mr Mackenzie:** I think the only point I would make, once again, is that we've made it clear that there is an extension of the period of time but that we have not abandoned the pay equity campaign or program. I guess you're entitled to your own views when it comes to who's going to have the responsibility to see whether this is able to continue or whether it will get cancelled down the road.

**Mr Thomas:** If I may just correct one point I think you made, Mr Arnott, just to be clear, the government doesn't normally get involved in the pay equity dealings between the parties.

**Mr Arnott:** Don't you set up the plans they generate?

**Mr Thomas:** No, the parties are free to negotiate whatever agreement they can reach on pay equity, provided that they live within a certain framework that's set out by the act; for example, that the schedule of payments is at least 1% a year. Beyond that, as long as the parties can agree with each other on the pay equity plan, including who gets payouts, who gets how much and when they get them, the government is not involved, the pay equity office is not involved, just to be clear on that.

**Mr Arnott:** However, if the annualized payout were less than 1% per year, you would step in and tell the employer and the employee who had come to that agreement that their pay equity plan was unacceptable.



**Mr Thomas:** It tends to be complaint-driven. It tends to be one of the parties coming out and saying there's a problem.

**Mr Arnott:** Are you saying you've not rejected any pay equity plan?

**Mr Thomas:** No, I'm not saying that. I'm just saying that, by and large, I think the figures show that the vast majority of pay equity situations that have occurred in the province of Ontario have been dealt with by the workplace parties themselves, the employers and the bargaining agents.

**Mr Arnott:** But the government maintains the right to intervene if a plan is unacceptable.

**Mr Thomas:** Yes.

**Mr Arnott:** I'm wondering why we need proxy comparisons in the public service to increase salaries and wages of employees. I'm wondering why, if you felt that was a desirable objective, Minister, you would not simply increase the salary component of transfer grants to the broader public service, an increase which would allow it to bring up the pay levels to the level that you feel is desirable for specific employees. Is there any fundamental reason why you could not do that without bringing in a pay equity bill such as this one?

**Mr Thomas:** I think the problem you face, Mr Arnott, is that you used the words "a level that you think is desirable." That's a fairly subjective level established by government, in effect, for potentially hundreds and hundreds of broader public sector workplaces where in fact the workplaces themselves ought to be given a methodology to determine what ought to be the appropriate level. Proxy does that.

**Mr Arnott:** Had they not already done that to some degree by isolating specific groups? You mentioned specific groups—child care workers and nurses, for example—which will be helped through pay equity changes. Are you not specifically isolating certain groups of employees in that instance?

**Mr Thomas:** What we're doing with the proxy schedule, essentially, is trying to identify those kinds of organizations that probably will have a difficult time achieving pay equity through job-to-job and proportional value and making sure they have a proxy organization they can move to.

**Hon Mr Mackenzie:** In other words, if they have no male comparatives to use in their existing operation, they can go outside of their existing operation to look for a comparator. They're the seeker and there are others who have achieved pay equity and they make the application to the commission and see that they have an avenue to achieve pay equity. There are 80,000 women in that category who are not covered under the proportional value.

**Mr Arnott:** There's no statutory or regulatory impediment to the government doing that, though, being, as you say, subjective in picking out certain groups for increases. That's what I was asking, and I gather that's not the case.

Changing gears, I suppose, to the issue of the difference between the private sector employers and the public sector employers, you concede, Minister, that you have extended the time frame for which public sector pay equity will come into effect. That has not been the case for the private sector. There has been no change for the time of implementation.

You suggest that the economic difficulties that the province is facing, and I assume the revenue situation that you're facing, the high deficit, the high debt that's being added on each year, is reason enough to delay it.

Do you not understand that there are thousands of businesses and small firms out there that are struggling for their very survival at the present time in this difficult economy? They are facing the same economy that you're facing. Do you not understand that a company with 12, 13 or 14 employees—I mean, you suggested that you've given them plenty of information. Many of them, in their very struggle for survival, are finding it difficult to keep their revenues high enough to pay their bills. In a complex matter such as this that is being asked of them, demanded of them, by government, many of them don't have time to read the information that the government is sending them on a regular basis.

**Hon Mr Mackenzie:** I think one of the things that either you're forgetting or we haven't explained well enough is that the private sector never did have a time frame. It was 1% of payroll a year until they had achieved it. That hasn't changed.

**Mr Arnott:** There has to be an adjustment for certain companies by January 1, 1994.

**Mr Thomas:** Yes, but the fact of the matter is, Mr Arnott, the Pay Equity Act was set up in a way that put a higher burden on the public sector, including reaching pay equity by a specific date, which was 1995 in the current act, and the bill moved that to 1998.

There was no end date for the private sector, so I would argue that the private sector, for the last three or four years, has been able to budget its 1% a year and plan for that, and it keeps doing that until it reaches pay equity. All we've done for the private sector in the bill in fact is to extend proportional value's start date to January 1, 1993, from January 1, 1992.

To Mr Tilson's question about what we have done for business, business has a one-year delay in when it has to start proportional value, compared to what was in Bill 168. It's important to distinguish between when you have to start doing something and when you have to finish it. Private sector employers have no finishing dates.

**Mr Arnott:** Yes, but the initiation date is a starting point where money is going to be coming out of the business.

**Mr Thomas:** For proportional value, that's been moved from 1992 to 1993, and I think that's the change that would impact on employers.

**Mr Arnott:** Your argument is that that's acceptable to business, and I don't agree.

**The Chair:** Two more minutes.

**Mr Arnott:** An interesting thought came to my mind when we were doing the briefing. In the hierarchy of the Ministry of Labour, a deputy minister reports to the parliamentary assistant to the minister. Does the deputy minister report to the parliamentary assistant to the minister directly in terms of the organizational hierarchy of the ministry?

**Mr Thomas:** I hadn't thought that through. I think it's a joint relationship. What do you think?

**Mr Arnott:** But when you're talking about pay equity, equal pay for work of equal value, and you say you're going to make that determination based on skill, effort, experience—

**Mr Thomas:** Skill, effort, responsibility, working conditions and so on.

**Mr Arnott:** —it's interesting to me that the ministers in this place are paid less generally than the deputy ministers.

**Ms Murdock:** Yes.

**Mr Arnott:** When you look at pay equity, I'm just curious as to how that comes into play.

**Mr Tilson:** Trying to get some more money for you, Sharon.

**Mr Arnott:** Now, they may be men or women—the deputy minister might be female. There's no specific—

**Mr Thomas:** The simplistic answer is that pay equity deals with systemic discrimination.

Interjections.

**The Chair:** Thank you, Mr Arnott.

**Mr Thomas:** A good point to end.

**The Chair:** Mr Minister Bob Mackenzie, parliamentary assistant Wayne Lessard, James Thomas, Ms Evans, Ms Bouey and Ms Sulzenko, on behalf of this committee I'd like to thank you for taking the time out of your busy schedules this morning and giving us your presentation. Mr Tilson?

**Mr Tilson:** I'd just carry on with an issue that was raised by Ms Poole. We too have a number of questions. These are all policy questions, administrative questions. Who are we going to ask them of? I don't want to talk between 12 and

12:30. Is there another time being set aside by this committee to enable us to ask questions of, if not the minister, at the very least some of the staff?

**Mrs Caplan:** Could I suggest, Mr Chair, that the subcommittee might meet to set aside some additional time for the committee members to have an opportunity to discuss this perhaps with the minister or parliamentary assistant but certainly with the staff prior to the beginning of clause-by-clause?

**The Chair:** Or we could meet at 1:15 today and talk this over at the subcommittee meeting. Would that be agreeable, one person from each caucus?

Interjections.

**The Chair:** It could be anybody. Would that be possible?

I would advise the committee that there are usually technical people around during the public hearings to answer any technical questions that come up also. Ms Poole.

**Ms Poole:** Yes, Mr Chair. I'd just like to make a motion that we commence at the beginning of scheduled hearing time regardless of whether all caucuses are represented or all members are present.

**The Chair:** Agreed. Being as we have a fairly tight schedule, that's exactly what the Chair was going to use his discretion and do. Thank you very much. We'll have a 1:15 meeting with the subcommittee. This committee stands recessed until 1:30 this afternoon.

The committee recessed at 1201.



## AFTERNOON SITTING

The committee resumed at 1332.

**The Chair:** I'd like to call this committee back to order.

Your subcommittee met on January 18, 1993, and agreed to the following: first, that the ministry staff will be invited to appear before the committee on Monday, February 1, 1993; second, that clause-by-clause will commence on Tuesday, February 2, 1993; and, third, that each party shall have an opportunity to make a statement at the commencement of clause-by-clause.

Any questions or comments? All those in favour? Opposed? Carried.

## EQUAL PAY COALITION

**The Chair:** I will proceed now by calling forward our first presenters, from the Equal Pay Coalition. Would you please come forward. Good afternoon. As just a reminder, you'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd leave some time at the end for some questions and comments from each of the caucuses. As soon as you're comfortable, could each of you please identify yourself for Hansard and then proceed.

**Ms Daina Green:** I'm Daina Green, with the Equal Pay Coalition.

**Ms Maria Luja:** I'm Maria Luja. I'm the pay equity coordinator for the Ontario Secondary School Teachers' Federation.

**Ms Muriel Collins:** I'm Muriel Collins. I am the national chair of CUPE's women's task force.

**Ms Pat Bird:** Pat Bird, representative of Times Change Women's Employment Service to the Equal Pay Coalition.

**Ms Catherine Bowman:** Catherine Bowman, the executive director of the Association of Allied Health Professionals of Ontario.

**The Chair:** Thank you. Please proceed.

**Ms Green:** Thank you and good afternoon to all the committee members. We hope to be presenting for about half an hour and to leave about half an hour for questions this afternoon.

We're very pleased for the opportunity to appear before the committee as well as submit a brief, because our brief is very complete and also in a way very technical. What we hope to do in our presentation today is to give you more of a sense of the themes that the Equal Pay Coalition has been concerned about in regard to Bill 102.

I'd like to talk a little bit about the Equal Pay Coalition's role in pay equity in the development of legislation. We are a very broad-based group that started in 1976. We continue to have a very active and broad base. On page 1 of your brief you'll see a list of the organizations that are members of the coalition. Today we have with us members primarily from trade union organizations, and also from Times Change Women's Employment Service.

We have a history of lobbying. We've been before almost every committee that's ever been dreamed up to discuss pay equity in the governmental arena, and we have been pushing very hard for effective legislation and for amendments to that

legislation to continue to make the legislation stronger and more like equal pay for work of equal value.

We of course are not really sure what you were briefed about this morning, but we're sure that you know quite a bit about the way pay equity legislation works in principle and also in this province. But we just would like to remind you of the basics. One thing is that there have always been a lot of women left out of this legislation.

In the actual legislation there is a requirement that the government study and come forward with recommendations about proportional value. That promise was made five years ago and now we are finally looking at the implementation of that. We have been pushing for this and we sometimes feel that if we hadn't been pushing and organizing other groups to keep pushing, we might not be here today. So we do recognize that we are definitely making some progress, but we have some real concerns about the way the methodology is being proposed at this point.

We also lobbied for the Pay Equity Advocacy and Legal Services clinic to help non-unionized women in particular gain pay equity, and we have held off in large measure on public criticism while we've been lobbying for these needed extensions. So now we really have to get down to brass tacks and talk about how we're going to make pay equity a truly universal right for women in this province who continue to be underpaid.

Despite the recent media coverage, there's still an immense wage gap and there's a need for pay equity as part of an employment equity strategy. Actually, in the paper last week it was reported that women's wages have reached 70% of men's wages. First of all, this was trumpeted as a great achievement. I wasn't that excited about it myself, but less so when I reflected that in the private sector, where there are fewer unionized women, the wage gap actually may approach 50%. So the fact that some of the strongest public sector unionized workers have been able to push through a variety of ways to reduce the wage gap, partly through pay equity and partly through other measures and internal pushing for more employment equity type measures, doesn't mean that what we have in place will allow all the women in this province to make wages that are like what their male counterparts make when they work.

The extension of pay equity will especially benefit many racial minority and immigrant women. Many of these women were left out of pay equity before and, as I said, we see pay equity as part of an employment equity strategy.

Many of the women this Bill 102 should cover are women who are likely to be left out of the employment equity process because they're in small workplaces. Here we'd like to emphasize that we believe there is a way and certainly a legal opening for Bill 102 to be expanded to include workplaces with fewer than 10 employees or establishments of fewer than 10 for pay equity through a complaint mechanism which is already, in theory, part of our Ontario Human Rights Code, that any woman could complain about discrimination in employment because of sex. We believe it should be codified and brought together under the auspices of pay equity.

We would also point out that since the idea about proportional value has been bandied about for some time, a number of bargaining agents have been able to bargain agreements that include proportional value. Now there's a bit of a breach that is quite embarrassing, because instead of having proportional value come in in a smooth way, continuous with the rest of pay equity, we see this gap now where the government intends to delay the implementation of proportional value.

1340

At the bargaining table many bargaining agents told their employers they were going to have to do it anyway. Now there's a very unfortunate situation where employers are saying, "Well, it looks like I didn't really have to do it now and you made me go back to 1990," or "You said I had to do it now and it doesn't even start for another couple of years." We see that as a real problem.

There is a large amount of confusion among women and men about how pay equity works. We see Bill 102 as an opportunity to help make the actual language of the legislation clearer. I believe that one of the reasons you haven't been overwhelmed by requests to present is that the whole area of pay equity legislation has become so technical and so jargonized that although many people are affected, there have been problems for women and men in the province to really understand what they already have rights to, whether they in fact have those rights and how to get them and what the amendments could bring them. But we, as members of a variety of organizations, are very clear that there are a large number of women who would be able to take advantage of the kinds of new methodologies that are proposed in Bill 102.

We also know that women have been promised that they were going to get covered. We've certainly been telling women that the government has said at various times that it's committed to eliminating many of these exclusions. But there's a real breach and there's a real gap between what people are expecting and the fact that people believe that market value is going to change for women's work and that all people would be included and the reality, which has been that many women have not got justice and they are not likely to unless every succeeding piece of refinement, up to and including the review of the entire act, moves towards something that's easier to understand and easier to implement.

We don't really find that the amendments as they're laid out in Bill 102 really improve the clarity of the new ideas. We're known for having very punctual meetings; we usually start at 4:30 and we end at 6, but when we tried to understand the bill we found that we ran overtime because we couldn't even really understand the language that talked about the methodology for what the government is calling proxy comparisons, which we call cross-establishment comparisons. The language is not clear and could use a lot of tightening up.

We know also that there have been gaps in coverage. Within a sector of employment, there have been types of organizations that are left out, for instance nursing homes, where they didn't have men to use as male comparators; there were no male jobs, or not enough. Also, in certain workplaces very frequently there were individual job classes that didn't find matches. This is throughout both the public and the private sector. This is what this bill is supposed to fix and we certainly commend the government for moving to do that.

We also believe that the act shouldn't be defining only one method of doing things. There have been a number of ways different organizations have found to reach the same end. We believe that choice should be up to the parties which are developing their pay equity plans.

I'd like to turn the mike over to Maria, as we talk about the priorities that the Equal Pay Coalition has with respect to amending the act. Maria Luja will speak a little bit about the proportional value methodologies and provisions.

**Ms Luja:** Thanks, Daina. I would also like to thank the committee for allowing us to make this presentation. The OSSTF will be submitting a written brief on its own behalf. Today I would like to focus, on behalf of the Equal Pay Coalition, on the proportional value method of comparison.

It is of grave concern to us that this system should not be an alternative to job-to-job comparisons. The way the act reads now, it appears as though an employer who has not achieved a pay equity plan under the job-to-job method, where that employer could achieve a pay equity plan using that method, will not have to do that and will be able to shortchange its female employees and force them into proportional value. We urge you to make sure the language is clear that this is not allowed.

Further, we believe that the amendments to the act should not remove liability for failing to achieve pay equity under the present act. We also believe that is a possibility in this legislation.

The delay in the beginning of payouts must be eliminated. Employers have known that 1992 was the year. It is our belief that women who could not use job-to-job comparisons should have the right to have their pay adjustments to 1990, the same year as their sisters. In some instances, we have workplaces where there were comparators for one group of employees and not for other groups of employees. Those women now have to wait until 1993, another three years, to achieve parity. We think this is patently unfair.

We also believe that the need for the term "representative groups of jobs" should be eliminated. In my personal experience, I know there are some boards of education where representative groups of jobs will not be possible, but there is one male job class. If an employer is able to say, "Sorry, you have to have representative groups of jobs," then all the women workers in that workplace will be denied their right to pay equity under the act.

Lastly, we believe that there is no need to specify an acceptable method for PV comparison. It is our opinion that in this case, in our case, the employees and the employer can best work out the system that is most conducive to achieving pay equity in our workplace.

**Ms Bird:** My name is Pat Bird and I'm going to be speaking to the section of Bill 102 that deals with women in all-female organizations and the way in which they are now to be brought under the Pay Equity Act.

Back in 1986, when the original Pay Equity Act was being debated, the government seemed at a loss about what to do with women who were in all-female organizations. The fact that there weren't any men in the organizations seemed to be a complete block to figuring out how to properly value the work that was done in those organizations. Through strenuous



lobbying, primarily by the members of the Equal Pay Coalition, the OFL and others, we succeeded in getting into the bill the requirement that the government of the day would study how to do it and would report back and take action within a year. We're now in 1993, five years after the act was enacted. This is quite a long delay for the women in the all-female organizations.

I'd like to point out that the women doing work in all-female organizations are primarily doing work that has traditionally been done by women, often in the home without pay. The undervaluing of that work has been substantial and severe. It is urgent for the government to remedy that and to make sure that discrimination on the basis of gender no longer exists in this sector. It's a small sector relatively, according to government figures in the range of 80,000 workers.

The organization I represent, Times Change, a women's employment service which is counselling women who are seeking employment, feels that the recession has taken its toll in this sector and that it may well be fewer than 80,000. In any case, given the whole range of more than two million women in the province, it's a small group. But symbolically, it's very important. It includes the day care workers whose work has been acknowledged universally to be undervalued. It really is high time that this be remedied.

We commend the government for taking leadership. It is the first jurisdiction in the world, we believe, to recognize the gender discrimination in this sector and to take action, and because the government is taking a leadership role here, we are concerned that the government really act as a leader and put in place methodology that really works. Therefore, our comments are to try and assist the government to do it right.

### 1350

Part of the way of doing it right is to make the language of Bill 102 plainer and to make clearer the kinds of terms that are being used, not to obfuscate. For example, the term "proxy" has been introduced, and the term "proxy" has the unfortunate legal connotation of having the authority to act for another. In the case of Bill 102, this would give the organization to whom the all-female organization compares the power to take control of the process. We think it's really important that instead of "proxy" the term "comparator organization" be used.

We think that the use of the term "seeking" for the all-female organization gives a kind of seeking or without resources character to the all-female organizations, and we prefer that the gender of the organization be solidly in there. So to call it "all-female" is to clarify what we're about, that the all-female organization has to go across establishment, has to find a comparator organization in order to borrow males to do the comparison, the methodology. But it's important. These are organizations without a lot of resources, and the plainer the language, the easier it is for those organizations to do the necessary work.

We think it's also very important that the basic principle of pay equity—that females compare their work to males and get the equivalent amount that is found to be discriminatory, the suppression of their wages—be recognized when we're doing all-female pay equity. Bill 102 has females comparing to females and rising to the rate those females in the comparator organization got. We think that's an unnecessarily

complicated method and that it is as easy for all-female organizations to identify pertinent male comparators as it would be to get female comparators in those comparator organizations.

As with the rest of establishments already covered by pay equity and as is foreseen for the proportional, we think that to as much extent as possible pay equity ought to be a self-managed process. Therefore, the locus of control, the people who know the work of the all-female organizations, are the people who work in them, and you've got to leave as much control as possible in that organization and allow them to make the choices, which the current Bill 102 does not give.

In Bill 102, there is a right for comparator organizations, if a single comparator male or female job is not to be found, to use a group-of-jobs approach. In the current act, that group-of-jobs approach is only used with the agreement of the parties. We feel that a unilateral right shouldn't be given to comparator employers to go to that methodology, that it's more likely that the females will be able to find comparable jobs. It should be the agreement of the parties if the group-of-jobs approach is to be used, as it is in the current act. We don't want to set up unnecessary differences between what the current act already allows and the extensions.

There also is in Bill 102 a fairly punitive set of penalties to be lodged against the all-female workplaces if they unduly disclose information from comparator organizations. It is our view that these are overly protective of the comparator organizations. These comparator organizations are all in the public sector; they're funded by public funds, the same as the all-female organizations. No other group has these kinds of fines being assigned to them and these simply should be deleted.

Finally, the payouts ought to be in the same five-year period that other workers in the public sector are faced with. It's a small group of workers and there should be an end date of 1998 by which the payouts would be made in the all-female establishments.

**Ms Bowman:** My name is Catherine Bowman and I've been asked to address the other changes in Bill 102 that are of importance to the coalition.

One of the most important things is that Bill 102 fails to extend pay equity to all women, and most notably those in workplaces with fewer than 10 employees. The principle of universality is one that has been very important for many years for the coalition and we think a new section should be added to the Pay Equity Act that would provide a complaint-based mechanism as opposed to a proactive mechanism. Where women believe their compensation is affected by discrimination because of gender, they should have the right to complain to the Pay Equity Commission and file a complaint under the appropriate sections of the bill.

As has already been mentioned, the coalition also has grave concerns about the decision of the government to extend the full completion of full implementation of pay equity in the public sector from 1995 to 1998. Women should not have to trade their legislative right that is already contained in the Pay Equity Act to achieve pay equity for women who have not been covered already. We believe that tradeoff is not appropriate and Muriel Collins would like to speak in some detail regarding that.



**Ms Collins:** I would like to allow you to have a look at the women I represent in CUPE. I have worked for 25 years in the health care sector. When I started my work in the health care sector, my pay was very low. At that time, we didn't have the recessions we have now. After working with women in the health care sector, sitting at the negotiating table to negotiate the pay equity adjustments, collecting information, revising job descriptions, we have found inequities against women very, very—not surprising, but disappointing, that all the years of discrimination against women in the workplace, no one took notice.

On behalf of the women I work with, we too commend the government for putting the bill forward. We have just ratified the tribunal's settlement. As an example, for the years when we were ratifying collective agreements at a bargaining table, the percentage of workers who came out to vote for the settlement was 100% and it was gratifying. That alone tells the story of how important it is for women in that sector to be given the pay they rightfully deserve.

We are urging you to maintain the payout dates in the current act. We are asking that there be no delays or no take-aways, because it's very important in the health care sector, also to women in the private sector, who have been denied the right for equal pay. We would like you to consider the proportional value methods and that there be no deletions of the establishments from the schedule.

1400

**Ms Bowman:** I'd like to just continue with some of the other amendments that the coalition has concerns about in the form of takeaways. Bill 102 introduces language dealing with changed circumstances in a workplace, and it provides protection against reduced adjustments for amended pay equity plans as a result of changed circumstances, but only for employees who work in a unionized setting. The coalition believes that there has been an oversight in dealing with amended plans in a non-unionized setting, and there should be the same protection afforded to those employees.

There is also a new provision being proposed on allowing parties to settle following an order by a review officer. We don't believe that it is necessary to deal with that, as has been proposed under Bill 102. We think that amendments can be made to the section of the bill dealing with review officers and putting in very clear language that an order cannot be revoked unless it's by the result of an agreement between the parties or a decision of the Pay Equity Hearings Tribunal. We do believe that it's very important, however, to ensure that no party is entitled to waive any obligations or rights under the act in settling any disagreement.

There are also concerns the coalition has regarding the administrative changes proposing that any person could be a party to proceedings before the hearings tribunal as long as they were entitled by law. The current act describes who is entitled to be a party before the hearings tribunal, and the coalition favours that approach. We have some serious concerns that the language as it is proposed would be an invitation to litigation, and we already see enough of that. We do believe that the pay equity office should be added, however, and should be entitled to have standing if it is trying to enforce the act.

We have concerns about the language that disallows the crown to be named as the employer for the purposes of pay equity. There are already tests that have been developed by the Pay Equity Hearings Tribunal in the Haldimand-Norfolk case, and those tests are quite sufficient. It should be left to the hearings tribunal to determine that.

There are language proposals that there would be a weakening of the obligations to maintain pay equity, and that comes up in a couple of places in Bill 102. The coalition believes that those are unnecessary and should not be added, that again any concerns dealing with maintenance should be dealt with by the Pay Equity Commission or by the hearings tribunal. In any event, we believe that is going to be one of the important issues that will be dealt with in the review of the act when it comes up in 1995 and shouldn't be dealt with at this time.

The final point here is that there is an amendment dealing with amending establishments in this schedule. The present act says that establishments can be added to the schedule. Opening that up and just saying that the schedule can be amended with respect to who is or is not a public sector employer we believe would open the door to have establishments removed from the schedule. We have very serious concerns and believe that is inappropriate and should not be allowed to happen.

**Ms Green:** I'd like to sum up our points, our most important priorities, in conclusion. As a coalition that's very broad-based, we speak for unionized and non-unionized workers. We also refer to women who work both in the public sector and the private sector. We are very concerned that this bill is based on a kind of tradeoff. Coverage of new workers who were previously excluded is being traded off against delayed payouts and weakening of maintenance.

I just ask you to think about what would happen if a woman retired any time between 1990, 1991, 1992, 1993 who had not been covered under job-to-job comparisons in either the public or the private sector. She simply would not get any adjustment. She would leave and her pensionable earnings would be based on that low salary that was never adjusted.

We want this bill to work administratively and politically. That's why we're urging more simplified language and a general reduction. If you go through our brief carefully, you'll see that we've suggested the deletion of a number of sections which we don't feel add anything except a lot of bureaucratic red tape.

We would like to reiterate that we see pay equity as part of an employment equity strategy which is very much needed in this province. Even if pay equity worked perfectly, it would probably only reduce the wage gap by about one quarter. That leaves a lot of salary disparity between men's wages and women's wages in this province that needs a much more global approach to remedy, and we don't think it's fair to make the women who have waited the longest wait longer for their money.

Finally, one principle we think cannot be emphasized enough, especially with respect to the cross-establishment comparisons, is that the women who are going to be affected have to be the ones who have control over the methodology. They don't need to be dictated to about which method they



must use, exactly how they must do it; they don't need to be under the control of the larger comparator organization, which under the scheme of the government would select the jobs it could use as a comparators, filter and supply whatever information it deemed useful and tell them: "Okay, here's your new salary. Here's your new rate."

We don't think that's an appropriate way to treat adult women in the workplace and we would urge you to go over our presentation, which took us quite a lot of study to come up with, if you would like some concrete and positive suggestions about alternative ways to achieve the same ends the government is proposing in Bill 102. We have left time for you to ask questions and we certainly hope we can address them at this point.

**The Chair:** Each caucus will have about seven minutes for questions and comments.

**Mrs Caplan:** I'm assuming that you were part of the consultation the government had in the drafting of this legislation, and I'm surprised that you have so many recommendations that have not been incorporated in the legislation that is before us. Can you confirm, were you part of that consultation and were you surprised that you weren't listened to?

**Ms Green:** It's been a long and very difficult process, I would say. I think a large part of the issue has been convincing people throughout the government, in both the civil service and on the political side, that these methodologies are feasible and workable. There's been a lot of back and forth.

Certainly there were some surprises in what we see, but we do see that the government has listened to us in some of our concerns and failed to listen in the other ones, and we're just like a broken record. We keep coming forward again and again with the ones we think the government should really listen to us about.

**Mrs Caplan:** My colleague earlier this morning, when questioning Minister Mackenzie, the Labour minister, pointed out, and in fact he himself acknowledged, that he'd been in the House for some 18 years. Several of the government ministers were very vocal in opposition in their criticism of the Liberal pay equity bill in 1987.

One area where they had been particularly critical was in the fact that the under-10 establishment was left out, and the Agenda for People was very clear that their pay equity bill was going to cover all women. During your consultation, was that not an expectation you had, that the NDP government would be moving in that way?

**Ms Green:** I find this, frankly, a question that's really just intended to embarrass the government.

**Mr Winner:** Hear, hear.

1410

**Ms Green:** It's been an ongoing question about how to include the under-10s and what is the best legal mechanism to do that, and we haven't achieved consensus. We have suggested a number of things and the government has listened to us.

There's been a definite question, if you can get only a certain number of amendments also approved by the opposition parties, which are the ones to push on and is this one that the opposition will support. If this is one that you are prepared

to support, I'm sure that will be a point in favour of getting coverage for those women in the under-10 establishment.

**Mrs Caplan:** The last question I have, and this might be embarrassing for the government also but the opposition sometimes asks embarrassing questions of the government—

**Ms Green:** Fair enough.

**Mr Curling:** Don't apologize for that.

**Mrs Caplan:** —is the fact that the transfer payments particularly, and I was struck by what you had to say about those in the health sector. I'm particularly knowledgeable about that and I was pleased to hear you say how well the existing law had worked to assist women in that sector. One of the concerns I have is that because of the government's funding priorities and general mismanagement of the economy, the shortfall in funding of pay equity in particular and transfer payment specifically has resulted in women losing their jobs, and job loss particularly in the transfer payment environment.

You talked about tradeoffs and losses. I guess the question I would have to ask you is, because you've seen this government not funding pay equity in the way that we had contemplated that it would be supported, are you concerned about job loss as a result of government underfunding of pay equity settlements?

**Ms Bird:** I think job losses are a concern to every worker in this province.

**Mrs Caplan:** Absolutely.

**Ms Bird:** It's not only those who are faced with pay equity who are feeling insecure. There are many reasons why jobs are being lost. The spectre of job losses was one of the things that was always an argument against pay equity in the early days, when we were lobbying for the first act.

Certainly the restrictions on revenue that the government is faced with are serious and it's looking to restrain wherever it can. We hope it won't lead to job losses and we sincerely hope that it won't lead to job losses in the health care sector, which is 87% female; that is a concern.

But we retain the position that the issue we're talking about is the fair compensation of women and that discrimination can never be bartered off for larger employment and discriminatory wages. It's important that the principle of pay equity be extended, and we certainly are making our voices clear, I think, about extension and about holding to the current deadlines.

**Mrs Caplan:** The fact that the time lines have been extended and delayed by an additional three years and that an unfairness and a discrimination have resulted because of that are concerns that you have.

**Ms Bowman:** Yes. The bill as it's proposed allows employers to reopen plans that have been negotiated in good faith between the parties and where there are no unions to unilaterally extend the payouts. We believe that that's inappropriate.

**Mr Tilson:** I'm interested in your brief and I thank you for coming and presenting it to us. Many of the amendments I know our party will consider in making presentations to the committee, and obviously I would like time to digest some of your thoughts. They're excellent thoughts.



My question is a question of a general nature which almost all of you have referred to and which has been referred to in the press; some of you have been quoted in the press. That theory is, is now the time? The government of course says this is not the time, that we should delay things and that because of the recession we can't afford to do it. Then of course there's the argument with business, "Well, we'd like to be delayed too," and of course you're saying in your submissions, "No, everything should go ahead now." They're all excellent arguments, both sides.

My position has always been that in effect the government is creating further inequity by this legislation.

I'm going to read you a passage from a newspaper clipping which I'm sure some of you have referred to or seen. It was in the *Toronto Star* in December 1992. The headline is, "Time Not Ripe to Seek Pay Equity." I'm sure you've all got it in your files and are ready to respond, and I'd like you to do that because this is quite contrary to what you have been saying, not only here but elsewhere.

The passage I would like to refer to is in the middle of the passage. It talks about the assumption, rightly or wrongly, that because of pay equity being implemented at this time, at a time of recession, a time when companies and industries are having difficult times—that first assumption you may or may not challenge, but that's what they're saying. I'll read it:

"With limited dollars available, there's a good chance that organizations compelled to institute pay equity at this time will have to lay off some employees."

Then they list three reasons, which I'd like to read, and I'd like your comments:

"First, many of these laid-off workers would be forced to apply for unemployment insurance, a social program already under severe strain.

"Second, since those with the least seniority tend to be laid off first, there's a good chance that visible minorities would be overrepresented among the casualties. In other words, in the name of enforcing pay equity, we might be undermining much of the progress that has recently been achieved through affirmative action programs.

"Third, young people, some of whom have large student loans looming over their future, would also be extremely vulnerable to layoffs. Since there are already grave concerns about the high level of unemployment among our youth and the despair this is engendering within that generation, do we really want to contribute further to this problem?"

I know you're all familiar with this article, because it goes against what you've been saying, but I'd like you to comment on this article. The person who wrote the article—I hope I can pronounce her name correctly—is Donna Laframboise.

**Ms Bird:** Just as one comment, I would like to quote another woman, a member of a racial minority in the United States in 1867, which you will agree is a good deal back—125 years ago. We've been through many recessions, we've been through many boom periods. Sojourner Truth was an ex-slave, an abolitionist, a feminist, and she said this: "We do as much, we eat as much, we want as much." I think that sums up in very precise and clear terms what women have been asking for for 125 years, and that's when we have a recording of that sentiment.

**Mr Tilson:** I don't necessarily think this author would oppose what you've just read. She is saying this is not the time because of this recession, which is really the area I'd like you to address your thoughts.

**Ms Bird:** The point I'm attempting to make is that for over a century women have been saying: "It's time to pay women fairly. It's time to really bring economic equality and not have discrimination in wages embedded in the wage system." Over the years when the current act was being envisaged, there was no recession and still these women were being left out. So we think it's really an unfair argument to use the recession against inclusion of these women now.

1420

**Mr Tilson:** I guess what she is saying, of course, is that there's only so much money available to operate a business or something has to happen. Obviously, opposition parties are going to attack government for tax laws, labour laws etc, and that has been going on with this current government. Business has been most annoyed with the government—not annoyed; almost desperate for fear of survival and the threat of moving to vast layoffs. We've never in this province had so much unemployment as we've had during this current session, and not all of it is the fault of this government; part of it is the recession, and some of it is because of government policies. But business is saying that because of the recession, because there's only so much money in the pot, we are going to have to downsize what we're doing. They're doing it anyway because of other reasons that this government has put into it.

I guess my question is again—unless you dispute that, that there is money available—that perhaps the priorities should be different. But that's what they're telling us in articles like this, that they will simply have to change the direction they're going, which could mean more layoffs, and that troubles all of us. That's why I read those three examples. The very people who will be affected by those layoffs are the very people you and your organization are trying to protect, which would be a tragedy.

**Ms Bird:** The underlying assumption is that women have to continue sacrificing for the good of the organizations. I think what women in the province are saying clearly, and have been saying for some time, is that they're no longer willing to sacrifice, that they have the same right as men to equal wages.

**Mr Tilson:** This woman, Mr Chairman, is sympathetic to what you've just said, as am I. In her concluding paragraph, I believe, is something that I've looked at: Has the government looked at all of the alternatives? It says that being the guardian of all of society, our provincial government is expected to make difficult choices and to strike delicate balances.

When it comes right down to it, I'm not sure the NDP had many alternatives to its recent pay equity decision. I'm not going to stand up for them; they'll probably do that right now. The difficulty is that we are in a recession, and I think it would be tragic if there was more unemployment; that's my point.

**Mr Gary Malkowski (York East):** Thank you for your presentation; I was very impressed with its comprehensive nature and the way you've expressed your concerns about the legislation. Do you mind if I ask you two specific questions?



First, does your coalition include representatives from disabled women's organizations, for example, DAWN? Are they members of your coalition?

Second, from your coalition's experience in terms of the Pay Equity Act that was introduced in 1987 by the previous government and this that is being introduced now, do you think there have been improvements from the act that was introduced in 1987?

**Ms Green:** Our coalition doesn't have specific representation from any groups representing people with disabilities. As with many other issues, we find that organizations can only really participate in the coalitions that are meeting their primary needs. Therefore, while our coalition is very broad, it leaves out significant sectors. Certainly, many people with disabilities can't even get into the workplace; they are less concerned about pay and equity. Sometimes they'll even work for less than they ought to just to get into the paid workforce. So we understand that this has not necessarily been a priority for some of the groups representing people with disabilities.

However, we are aware of our responsibility as a broad-base group to bring forward the concern of all women who are engaged in working for pay. So I can't excuse ourselves or them; it's not a question of blame. But that is the current situation for the coalition.

In the area of whether there have been some gains, I would like to take this opportunity, on behalf of the coalition, to recommend to the government in the strongest possible way that the government undertake a review of the entire act so that it will be completed for 1995 and not wait until 1995 to do it.

We do see that there has been some progress. We see that Bill 102 contains a number of improvements over the Pay Equity Act of 1987. There's still quite a way to go. Some of the things we are discussing with you today are not even in the scope of what the government is planning to do. We believe that we need to get as much money as possible into the hands of women today so that women don't continue to subsidize the services they provide, but we believe that many of these things will have to be looked at with more perspective in the review of the entire act that is due to be completed in 1995.

**Mr Malkowski:** Just as a supplementary, if I could make a quick comment, I just wanted to say the vision of Agnes Macphail was one of pay equity and I'm sure she would appreciate the work you are doing now.

**Ms Murdock:** It's good to see you again; we meet at these occasions. Just on page 21 of your submission, am I reading that correctly to understand that you would want the cross-establishment organization, as you call it, to notify and therefore all salaries would be changed if there was an increase in the cross-establishment organization?

**Ms Green:** There's actually something missing in our brief. I'm very happy you raised that point. Let's say that you're in an organization right now that has two bargaining units and the women who are in a clerical bargaining unit find comparators in a plant bargaining unit. They're not necessarily aware of when each other's wages go up. Currently, what happens is that if that male job goes up because of a new collective agreement, they find out. They're in the same organization. The employer has a

responsibility also to raise the level of the female classification which was compared to that male job. Once we get into cross-establishment comparisons, how will anyone know when the male comparator rate goes up, or if it's done through the female, when that rate has gone up?

What we would like to see is that when the cross-establishment process is finished and the pay equity plan is written up, the all-female bargaining unit would notify the Pay Equity Commission of any male job classes that it found in another organization, so that they could be monitored. Therefore, when in the other organization the male jobs go up, the female jobs which are linked to male jobs go up; there's a progression.

Let me see if I can go back here. We had our women back in the office who were compared to these plant workers. Now the women clerical workers in another kind of an organization, in a library, are compared, in the government submission, to those women and through those women to those guys in the plant. So now those wages are tied. All three wages are now tied through a cross-establishment comparison. Now the library will say, "By the way, Pay Equity Commission, our salaries for this clerical job class are now tied to that factory." Then, when the factory raises its wages, it will notify the commission again and the commission will pass on that information to the library, so that its may also rise.

**Ms Murdock:** What you're saying, then, is that no settlement is ever closed.

**Ms Green:** The Pay Equity Act calls for maintenance of increases of the adjusted salaries so that the wages then do not diverge.

**Ms Murdock:** Yes, so we don't want to end up 10 years from now with a gap again.

**Ms Green:** We don't want the gap to reappear. It's exactly the same concept, but now, instead of being within one organization under the aegis of one employer, it's cross-establishment. There has to be a notification process.

**Ms Murdock:** Okay, so that's what page 21 is doing.

**Ms Green:** But it misses that piece that says that when they complete the plan they have to tell the Pay Equity Commission that they found male comparators in another organization and this is the list of those male comparators.

**The Chair:** Thank you, Ms Murdock.

**Ms Murdock:** I'm not finished, but thank you anyway.

**The Chair:** Ms Bowman, Ms Bird, Ms Green, Ms Luja and Ms Collins, on behalf of this committee I'd like to thank you for taking the time out this afternoon and giving us your presentations.

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ONTARIO COALITION FOR BETTER CHILD CARE

**The Chair:** I'd like to call forward our next presenters, the Ontario Coalition for Better Child Care. Would you please come forward. Good afternoon. Just a reminder that you'll be given up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks a little shorter to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.



**Ms Kerry McCuaig:** My name's Kerry McCuaig. I'm the executive director of the Ontario Coalition for Better Child Care.

**Ms Lindsay Thompson:** I'm Lindsay Thompson from the Southeast Grey Community Outreach, which is a member of the Ontario coalition network.

**The Chair:** Thank you. Please proceed.

**Ms McCuaig:** The Ontario Coalition for Better Child Care commends the government for tabling new amendments to the Pay Equity Act. We recognize that the legislation provides a commitment to extending pay equity to most workers in predominantly female workplaces in the private sector and to all-female workplaces in the broader public sector. When enacted, these changes will represent an important development in addressing the wage discrimination faced by women in the labour force.

However, there are sections of Bill 102, most specifically the effective date of the amendments, changes which will delay the payout date to workers already covered and the absence of a cap on payouts to women in workplaces where there is no male comparator, which will require changes. We will address these issues in some detail. However, as a member of the Equal Pay Coalition, we would like to take this opportunity to endorse the recommendations that were just presented to you.

The coalition was founded 10 years ago. We're dedicated to a universally accessible, high-quality, comprehensive, non-profit system of child care. Our members include all the major stakeholders in child care in the province, including child care programs and agencies, professional organizations, women's and teachers' unions and faith and community organizations. You will be hearing from many of our members during the course of these hearings.

The coalition recently completed an extensive province-wide consultation of its own. We held public meetings in 12 communities in addition to numerous forums, bilateral and round table discussions with a broad range of child care providers, consumers and advocates. Regardless of the constituency, the discussion focused on the quality and the affordability of child care. It is precisely these issues which are tied to pay equity.

The coalition supports pay equity because we maintain that the right to a fair wage is a fundamental human right in a democratic society. Women's traditional role in the workplace and the lack of social supports, including child care, has either overtly or covertly denied them this right.

Before we get into our recommendations, we think it's important that you have a snapshot picture of what the child care sector looks like so that you will see where we're coming from in making our recommendations. There are approximately 22,000 child care staff in Ontario working in a variety of settings: 18,700 work in the 2,800 centre-based programs run by municipalities, community colleges, non-profit boards of directors and commercial operators; another 2,800 work as contract employees for 102 non-profit and commercial private home agencies; another 500 work in 185 resource centres funded by the Ministry of Community and Social Services. So you have a number of staff spread out in a number of places.

Interestingly, all child care workers subject to the Day Nurseries Act are formally designated in the schedule of the existing Pay Equity Act. However, even before the act was proclaimed it was recognized that only very few child care staff, those employed by municipalities or community colleges, would actually be able to find the male comparators and consequently benefit from the legislation. For the majority of workers in the child care sector there were no male comparators; therefore no remedy, therefore no pay adjustments. At that time, we estimated that as many as 87% of the staff in this sector were ineligible to benefit from the Pay Equity Act.

From its founding, our coalition has focused considerable attention on the wages and working conditions of child care staff. This isn't only an issue of women and pay; this is an issue of providing an essential public service and ensuring that service is a quality service.

Child care staff enter the field because of their concern for children, and most likely they will leave the field because the value of the work they perform has not been recognized by society. Child care is a predominantly female occupation and the wages paid reflect this. The average hourly wage in Ontario is \$11.38 across all positions, and despite the fact that child care staff are better educated than the majority of Canadian workers, their salaries fall near the bottom of industrial wage earners.

Almost eight out of 10 staff working in early childhood education in Ontario have a post-secondary certificate, diploma or degree. In the Canadian employed labour force, only four out of 10 workers have this level of education. If you want to compare the work that a child care staff does to what a warehouse worker does—interestingly, the child care staff is a woman; the warehouse worker is predominantly a man—the warehouse worker earns 58% more than what she does.

In fact, poverty has become associated with the wages of child care workers. Using poverty lines developed by Statistics Canada and the Canadian Council on Social Development, it was found that a child care staff supporting another person, whether it be her child or her partner, earned \$3,200 below the poverty line for a two-person family. For child care staff who are sole-support parents, three out of four earn below the poverty line.

The problem is compounded by the finding that child care wages are losing ground to inflation. Between 1984 and 1992, adjusting for inflation, the average child care wage fell in real terms by 4.5%. It is not surprising, then, that 15% of full-time staff hold a second job and that when asked why, money is the major reason. Maybe that also explains why we can't wait for pay equity, and maybe that also explains why women are getting tired of continuing to hold the burden of low wages.

Wages are not only a factor for child care staff; they have a direct bearing on the quality of care offered. Stability is a major indicator in quality in child care, yet the rate of pay is a major reason cited for why one in five staff will not stay in the child care field within the next three years. This is also another public expense which I don't think we consider. The public pays to educate early childhood educators, but when you have 20% of your staff leaving the field, that is also a waste of public resources.



Wages in child care are determined largely by auspices. Qualified teachers employed in programs offered by community colleges and municipalities earn on average \$29,000. With the introduction of the wage enhancement grant, teachers in non-profit programs now earn \$23,000 on average. Commercial programs pay their teachers an average of \$15,000.

There are two factors which account for the higher levels of pay in the publicly operated programs. The first is the additional public dollars that those programs have access to; the second is the higher rates of unionization.

In regions where municipalities offer a child care program, the wages and working conditions of municipal staff have served as the benchmark for wages in non-profit community programs. The major barrier to fair pay in this sector is its organization and funding. Programs are funded through a combination of provincial-municipal grants and subsidies for low-income families which are cost-shared at the discretion of the municipality. Child care programs have no control over this income; their only source of income is the fees which they charge their full-fee parents.

However, we still must operate as a business. Our fees are determined by the marketplace and we're in competition with other programs in what we can charge parents. We run a very labour-intensive program; in fact, 85% of our program's budget is spent on staff salaries. In the absence of effective or sufficient public funding, any efforts to improve salaries or benefits must come directly out of increased parent fees, and a centre whose fees are higher than others in the region will not be able to keep clients.

Programs strive to keep fees, and consequently staff wages, down in order to remain viable, so child care staff are left to subsidize the service through their low wages. Even so, 5,400 spaces go vacant in Ontario because parents can't afford the fees. Meanwhile, 15,000 families are on waiting lists for subsidized care.

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We're simply sharing this information to illustrate that staff and working conditions in child care can only improve through a transfusion of public funding—one of the ways to do that is through pay equity—and that child care is an essential public service and needs to be funded as one.

We make basically six recommendations.

Recommendation 1 is that employees in private sector workplaces with under 10 staff who believe they are victims of wage discrimination must have the right to file a complaint with the Pay Equity Commission. This is particularly important if child care staff in the private sector are going to receive any benefits from pay equity.

In recommendation 2 we're asking you to delete section 1.1, which would close off the right of workers to argue that the crown is their employer. This is a right under the current act. Cases have been won at the pay equity tribunal on this. If we actually look at how child care operates, our wages and working conditions are set by provincial and municipal funding. These authorities have the right to see our budgets, our employees' T4 information, our benefits statements. They routinely limit wages, benefits, working conditions and staffing components. In every effect, they operate as the employer. We should have the right to argue that they are.

Recommendation 3 is that we ask you to maintain the date for pay equity achievements in the public sector to 1995. This directly affects staff in our sector in municipal centres. This we find the most difficult of the amendments included in Bill 102. To go in and reopen legislation which was already passed, to go in and take away from women benefits, struggles which they have already won, is the worst form of backtracking. We believe it sacrifices equality to the balance sheet.

If you're afraid about what this is going to cost, let me give you just one example: The largest child care operator in the province is the municipality of Metropolitan Toronto. It's recently reached a pay equity settlement with its staff. The adjustment will be \$1.17 an hour. Why should these women have to wait an extra three years before they receive pay equity?

We also ask you to maintain the original commitment for requiring pay equity adjustments to commence on January 1, 1993. Essentially, the argument here is that these women have waited long enough. They shouldn't be asked to wait longer.

In terms of the comparison method, under the legislation that Bill 102 replaced, the comparator was to be the municipal child care worker; the comparison would be her wages adjusted to pay equity. We believe this is the simplest method of comparison and the most efficient for our sector. Therefore, we request that the pay-equity-adjusted wage rate of the municipal child care worker should serve as the comparator for wages in the non-profit sector. In areas that do not have a municipally operated program, non-profit programs should be able to go to the next-nearest municipality which offers one.

Our last and perhaps most important point is that there has to be a cap on payouts for the proxy sector. We're recommending 1998. I'll give you one example here and Lindsay, when she talks to you, will give you a very graphic example of what it will be. Just let me give you, as an example, that the average gap between the profit and non-profit sectors is between \$5,000 and \$6,000, the average payroll of a non-profit program is \$3,350,000 and the average staff size of a program is 10. At 1% of payroll a year, staff would see their wages adjusted by about \$350 per staff per year. Many of these staff and child care workers will be retiring before they bridge the pay equity gap. Therefore, we encourage you to make this a priority in your deliberations.

I'll now ask Lindsay to illustrate further what I've been talking about in general.

**Ms Thompson:** I'm from South East Grey Community Outreach and I was told I was here to talk about what real-life teaching out in rural Ontario was like. Our area covers the southeast portion of Grey county, which is about 2½ hours northwest of Toronto. The closest large city is Owen Sound, and I believe the population is about 23,000.

We have a network of licensed child care centres. Our main resource centre-licensed child care centre is in Markdale, Ontario, and it encompasses a licensed child care centre, a toy lending library, a resource library, a theme box library, community play groups—a great parent break—and our administration offices. That centre has a capacity for 41 children, and that's the largest one we have in our network.

We have four other full-time child care centres and two before-and-after-school programs. The programs are in Meaford, Markdale, Walters Falls, Maxwell, Holstein—yes, they really do have Holstein cows in Holstein—and



Flesherton. For an idea of the distance we cover, it's 150 kilometres between Meaford and Holstein, so we cover a big distance.

Our centres are very small and very community based. The capacity ranges between 16 and 24 children. Each centre really does meet the needs of its own particular community. As a very quick example, one of our centres is vegetarian, because that population believes quite strongly in that. We try to meet as many needs as we can.

We also offer a lot of flexibility around enrolment. We find because we are in rural Ontario, this is really important. Not only are people working a lot of part-time jobs, we're also dealing with the seasonal work around farmers. So our population does increase around harvesting time, hay time and planting time. Our flexible program also means that you can get care for two or three hours a day or a full day or five full days a week, whatever it is that you need.

Our staffing is very much based on enrolment. Because right now enrolment is going up and down, we're having a lot of problems trying to keep all our staff employed full-time. We're trying to give as much part-time work as we can.

Our funding comes from direct operating grants and parent fees. We're fortunate that South East Grey Community Outreach has become an approved corporation, so we do flow our own subsidy dollars and we are lucky in that. I know not everybody has that bonus. That does offer a little bit more stability than we had this time last year, that's for sure.

Because of the fluctuation of enrolment, we're now not paying our staff yearly as a salary rate. We do have to pay hourly, which has been a big change. As Kerry said, we can't raise parent fees. We'd be totally lost. People can't afford that, and we do want to leave the licensed child care option available to as many parents as need it.

To get quite specific, our ECE-trained supervisors are making \$11.05 an hour. If that were a salaried rate, that would be \$23,000 a year. Our program staff, ECE, are making \$9.65 an hour, and that works out to be approximately \$18,000 if it were a salaried rate.

I compared these rates with the closest municipality, which is Owen Sound. A qualified staff person, ECE, starts at \$28,000. A supervisor in the municipality starts at \$36,000 and can go up to \$42,000. There's a really huge gap between \$42,000 and \$23,000, which is what our supervisors are making.

For non-qualified staff in the municipality, you'd begin at \$12.49 an hour and can go to \$14.46. In our organization, one-year ECE is \$9 an hour and unqualified is \$8.35. There really is an awfully big gap.

Kerry was asking me earlier if we lose a lot of people to the municipality. There aren't a lot of jobs, period, in rural Ontario. The other thing we're dealing with is distance. From anywhere in our network, Owen Sound, the municipality I'm talking about, is between a 40- and 45-minute drive, and that's not the nicest thing to have to cope with if you're in white-outs, blizzards and whatever in the winter.

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Also, people feel quite loyal to their own community and would rather stay in their community and work with the people they know. I think that's a big part of the ruralness: Keep that community feeling. But we certainly really support pay equity. I think it would certainly stabilize and support our

staff members and would also add greatly to the quality of child care, which is, I think, the goal of everybody who's interested in the child care field.

**The Chair:** Thank you. Questions and comments? Ms Poole.

**Ms Poole:** Thank you very much for your presentation today. It's been very helpful to our committee.

**Mr Tilson:** On a point of order, Mr Chairman: Are we going to start—I don't know, they always want to give the government the last word, quite frankly.

**The Chair:** It's been the tradition since I took over the committee, and the committee has never wanted to change it. The tradition started with the Liberals.

**Mr Tilson:** Well, I'm not going to change the tradition, Mr Chairman. It just seems fair to me, with respect, that the rotation should alternate.

**The Chair:** That's what I thought too, that it should alternate, but the committee's never decided to change it.

**Ms Poole:** I'm happy if you'd like to rotate rather than do first come, first served. It doesn't matter to me. Would you like to begin, Mr Tilson?

**Mr Tilson:** Sure. Mr Arnott.

**The Chair:** Okay. Mr Arnott.

**Mr Arnott:** All right. Let me compliment you on your very professional presentation. I really appreciate the fact that you could come in.

**Ms Thompson:** That was kind of you.

**Mr Arnott:** Ms Thompson, I represent the riding of Wellington, which is immediately adjacent to you. It was interesting to hear that your experiences in South Grey are very similar to the day care needs that we have in the rural parts of our riding.

We've heard over the short, I guess, day that we've commenced on these hearings that there is a concern that has been expressed. Pay equity, by definition, will increase the cost associated with salaries within any organization, public or private. There's a possibility that real jobs and future jobs, perhaps potential jobs, future job creation, might be lost or inhibited as a result of this increased cost of doing business, if you want to call it that.

Is there any point at which you would feel that your desire for increased pay equity would be somewhat limited, I suppose, if you could see that jobs were being lost, if you could quantify jobs being lost?

**Ms McCuaig:** I make one point: Pay equity becomes an easy excuse for why jobs would be lost. I can see a number of employers who have plans to reorganize their workplace referencing pay equity as the reason why they were in fact doing it. I think it would be difficult, although not impossible—things aren't impossible—to actually quantify how many jobs could or might be lost to pay equity.

But I'd like to approach this in the larger sense. I suppose that if the going rate out there was \$1 an hour, we could all have jobs but we wouldn't live very well. We probably wouldn't be able to feed and clothe and maintain ourselves at a subsistent standard of living, and there has been a real downward pressure on what wages are, particularly in Ontario.



**Mr Arnott:** Everybody's wages and salaries.

**Ms Thompson:** Right. Well, no. I mean, there is a difference. If you're working and you're in an age group, you know, the 45-plus, you find yourself—in fact if you look at the breakdown that the social planning council has put out, established people, 45-plus, who've raised their families and are established with their homes, are doing okay. Those who are not doing okay are young families, people new to the workplace.

The reason is, number one, there are no jobs. There are no jobs in general and there has been a flip from industrial jobs to jobs in the service and clerical sectors. It's quite interesting that when the federal government looks at what the big job creation places are going to be, it's not the high-tech jobs that we've been led to expect, it is the clerks and service and cooks and cleaners. In fact, it's been all of those jobs which women have traditionally filled and which women do traditionally fill.

I would argue that there is something to be said for—in the same way that there's a reason why we have minimum wages, not just because it's not a good thing to hire people for \$1 an hour but because it's not good for the economy to have people working for below-subsistence wages. Then we can take this further around pay equity and women and say that in fact—Dianne, maybe you can help me out here. Remember, I think we used to say something like \$7 billion a year is lost to the economy because women are underpaid. If we paid women what they were worth, I think we'd have a good job creation program.

**Mr Arnott:** I guess getting back to my question, you would say that no, it really doesn't matter if a few jobs are lost in the interests of enhanced pay equity.

**Ms McCuaig:** I think that in the long run pay equity is a good economic renewal program and that any short-term job losses, which I would like to qualify, I think would be very hard to quantify and would be offset by what would in fact be a better economy for all.

**Mr Arnott:** You very passionately made the case that child care workers are grossly underpaid relative to other occupations and you've indicated the average wage that many of them make. There are people I know who are coming out of high school, young people who have an option in terms of their future education. They might have a number of options: they might look at an early childhood education diploma at a community college; they could perhaps look at business administration at university or a community college; engineering, same thing, university or community college for different levels of achievements and accomplishment and study.

Do you think the average young person looking at these various career options has a reasonable understanding of what the salary expectation is going to be when he or she decides what career path to take?

**Ms McCuaig:** I can tell you that in child care they don't. I speak to enough community college classes and I'm amazed at classes that are about to graduate that don't have an idea about what the general wage rate is in that sector.

**Mr Arnott:** If the expectation or the knowledge were there, then I guess that wouldn't be a surprise if indeed they did come into positions in child care.

**Ms McCuaig:** If you're saying that if somebody chooses to be a child care worker, then that's a free choice—they could have done a lot of things, they could have become a doctor, I suppose—and they should be prepared to accept what they get, there's a problem with that. I think it's because—what is the value of this job? What is the value of this work? Isn't there something wrong with it? We're prepared to pay people who look after animals more than what we're prepared to pay educated people to educate our children.

**Mr Arnott:** Or to hit a baseball.

**Ms McCuaig:** A baseball or—

**Mr Arnott:** They command the biggest part.

**Ms McCuaig:** Let's look at caring for little things that need our help: children and animals. We're prepared to pay zookeepers twice as much as what we're prepared to pay women who look after our children. To simply say, "Well, you're a woman, you went into that job and you knew what you were getting into—"

**Mr Arnott:** No, there are many males go into the job, do they not?

**Ms McCuaig:** Interestingly, the few places where we find young men going into child care is in the municipally operated and community college programs where in fact the salaries are more reasonable. Remember the bank clerks? That used to be a nice male job and you could work your way up if you were a bank clerk. Now you don't see any male bank clerks because that's a class-ceiling job and it's low-paid.

**Mr Arnott:** Thank you.

**Mr Tilson:** Mr Chairman, do we have any more time?

**The Acting Chair:** Mr Tilson, you have four minutes left, sir.

**Mr Tilson:** Some of the comments you made, particularly on page 2 of your submission where you talked about how well qualified day care workers are and how poorly paid they are, I understand that particularly when we're trying to improve the quality of our day care system, the whole issue of encouraging people to go into day care. Perhaps it's a continuation of what Mr Arnott was getting into, that if you're going to encourage good-quality people to get into it, male or female, they have to be well paid.

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Both of you have made comments on the difficulty, particularly with this recessionary period at this particular time—which is why I suppose the government is delaying it—that if you raise the rates to parents, guardians or whoever cares for children, they simply won't go there. They'll find some other place to have their children cared for. If you don't do that, that leaves only one other source of revenue, and that is the government, one which is currently bankrupt. The deficit continues to rise—for whatever reason. It may be recessionary; it may be some of their policies; maybe it's all kinds of things, but the fact is that we're in a recession and money is very tight, particularly with this government. They're saying to us in loud terms that they can't spend any more money. If this policy is put forward at this particular time and the government isn't going to increase the grants, then it seems to me that, whoever draws up these budgets, something's going to get cut.



I'm not knowledgeable, quite frankly, on the workings of day cares. I'm sure you could educate me, and that's fine, but my question to you is, if the government is correct in its restraint—which I hope it is, because someone's got to pay this deficit back eventually; the deficit continues to climb. Whether you're male, female, minority or majority, whatever group you belong to, we're all concerned about this deficit, we're all concerned about taxes, we're all concerned about everything we're paying for. It's a serious problem. My question to you is that, given all that, there has to be a cut somewhere. If this legislation were to go through now, as you and the previous group before you say, will the quality of day care deteriorate?

**Ms McCuaig:** No.

**Mr Tilson:** I'm sorry.

**Ms McCuaig:** If this legislation goes through, will quality deteriorate?

**Mr Tilson:** If this legislation does not go through and the policies are implemented now as you are suggesting—in other words, that the delay not take place, that it be effective now. That's a reasonable argument. I know what you're saying when you're talking about well-qualified people not being paid. How can anyone dispute that? My fear gets back to one of Mr Arnott's questions: so we lose a few jobs. That may or may not be a legitimate argument. I hope you didn't say that. If you said that, it concerns me because then I raise the question, what will happen to the quality of our day care?

**Ms McCuaig:** Let me go back to deficits and recessions, because I think this is important. We've had a federal government that for eight-plus years has cut social spending in an effort to bring down the deficit. What we have eight or 10 years later is fewer social programs and a deficit that's just as big and is still not under control. Who's been paying for that deficit has been the people of Canada. They've been paying by paying more taxes and they've been paying for it by having access to fewer social programs.

There are other ways of fighting deficits. One of the ways of fighting deficits is not just cutting. The other side to it is revenue enhancement. You can increase revenue by—let's do something quite simple: Somebody who's paid more pays more taxes. If you increase women's wages through pay equity, they will pay more taxes. Again, I don't have this at my fingertips, but it is not difficult to get. Women pay back in taxes far more than what they use in social programs.

**Mr Tilson:** I understand what you're saying. You're trying to look at the overall big picture, and good for you, but I—

**Ms McCuaig:** Right, and pay equity is part of the overall big picture. You can't just hive it off in a corner and say, "If we do this, all this bad stuff is going to happen," because lots of good stuff can happen.

**Mr Tilson:** The difficulty is that revenue comes from two sources: fees and government. If the government doesn't have any more money or isn't prepared to put any more money into it, then something has to go. That's the concern I'm suggesting to you, that by insisting on your demands, which are legitimate—I'm not going to challenge that; no one's going to challenge that—will the quality of day care go down?

**Ms McCuaig:** I'm saying that if this government is the least bit interested in economic recovery, it has to put big money into day care. I'm not going to apologize for that.

**Mr Tilson:** All right.

**Ms McCuaig:** That's what you have to do. If you want women to work—

**Mr Tilson:** That's what I'm trying to get at.

**Ms McCuaig:** —if you want their kids looked after, you've got to pay for day care. Day care's expensive. I don't apologize for that, because inexpensive day care is bad for kids, and you can pay for it now or you can pay for it later.

**Mr Tilson:** Thank you.

**Ms Murdock:** I want to ask something specific on page 4 and it was something that was also raised by the previous presenter: the under-10 exclusion. I wanted to ask the previous presenter as well, but I ran out of time. But I've got lots of time to ask you. In terms of doing it on a complaint-based system to the Pay Equity Commission, what criteria would you use to determine the basis upon which the complaint should be processed? I know that in both presentations, it was in the context that if you feel you're gender-discriminated, then you can put a complaint through, but it's got to be more than that. I'm wondering what criteria you would establish to be used.

**Ms McCuaig:** I think that in this case, the staff in private centres or in private programs would have the ability to compare what was happening to them to what was happening in programs which were covered by pay equity. In the same way that the municipal child care workers have set the trend for the rest of the child care sector through pay equity, the non-profit programs would be able to set the trend for staff in the private sector.

**Ms Murdock:** In other words, then, you would be using criteria whereby—and you can correct me if I'm wrong or if I'm hearing you wrong—if, say, it's a municipal day care that has 20 employees, or more than 10, and has a set plan, you would use them to determine that you were discriminated against?

**Ms McCuaig:** I think the criteria of skill, responsibility, education and working conditions—those are the fundamentals of pay equity. Those are the fundamentals that anybody who ever has access to the act would have to establish, that hers was equal to who her comparator was. If you're saying, "How would a staff in a private centre argue that she was being underpaid," I think she would use those criteria and they would be supported by being able to point to what was happening in the rest of the child care sector to in part explain what the gap in wages were between her and other child care workers.

**Ms Murdock:** Okay. I know that two of my colleagues want to ask a question.

**Mr Will Ferguson (Kitchener):** My question will be very brief. I was somewhat struck by the statement that around \$7 billion is lost to the economy as a result of the low wages that are being paid, particularly to women in the private sector. Of course, the re-emerging theme in this room, and it sounds like an echo that was left over from Bill 40, is that we can't afford to do this because there's going to be this



consequence that somehow the province of Ontario's going to come to a grinding halt if you make this progressive step forward.

I want to ask you: If in fact the figure of \$7 billion is correct, would you agree that \$7 billion in all probability would put more disposable income into people's pockets and, as a result, give them more purchasing power, that if they had more purchasing power, they could go out and buy more goods and services that they can't acquire today, and that if they bought more goods and services, then of course they would in effect be creating employment for other individuals to produce additional goods and services?

**Ms McCuaig:** That's exactly the sort of spiral-up theory that we would advance. You can fight the recession, and we think that pay equity is a good recession-fighting program.

1510

**Ms Poole:** Thank you very much for coming before us today and adding, I think, considerable insight to the legislation we're looking at. I'd like to talk about page 6 of your brief, where you've talked about what the payout would actually be, on an annual basis, to the average child care worker. It comes to a grand total of \$350 per year per staff member. This is primarily because of the 1% limit, if that's what's going to be put into pay equity.

What I'm trying to reconcile is something I received that the Ministry of Labour sent to the Ontario Federation of Labour. It's called Proxy Pay Equity Costing. They say "Sub-sector," one of which is child care, and they've estimated 16,000 female job classes that would benefit, which I think you and I agree is probably a little higher than the numbers actually are. But it says, "Full-time annual average adjustment, \$10,000," and the annual total cost to the child care sector would be \$160 million. I'm trying to figure out where on earth, even at a fully mature plan, they get to \$10,000, because your figures make a lot more sense. That would take, like, 30 years for the person in the child care sector to reach full pay equity. Did you know of any explanation for this?

**Ms McCuaig:** Yes. You may know that in the early days, as part of the Equal Pay Coalition, we had a number of discussions with government about proceeding with the proxy, with extending pay equity coverage. What we found was that the civil service was basing a lot of its estimates on outdated information or information that had never been verified. In fact, this was an issue we raised when we saw these figures. This is very highly inflated. There is a substantial gap—nobody's arguing that there isn't a substantial gap—but \$10,000 is too high. If you increase the gap for everything and then you come out with a figure which is awfully high, then it becomes easy to scare any government into saying: "This is far too expensive. We can't do it." It was through the lobbying of the Equal Pay Coalition that the government was convinced that pay equity could be done within much more reasonable cost estimates.

**Ms Poole:** So these are probably earlier estimates of the government before it actually had done an accurate analysis.

**Ms McCuaig:** That would be my guess, Dianne.

**Ms Poole:** Okay, that makes some sort of sense. I'd like to talk to you about the wage enhancements, because you made reference to it in your brief and you also gave details as

to the average wage of child care workers in Ontario. Although I think they're still extremely low, I don't think there is any doubt that over the last decade there has been some real progress. I remember the first time I ran for election, in 1985. I think the average wage of a child care worker was something like \$9,000 or \$10,000. It was absolutely incredible. Now it's at least gone somewhat in a more favourable direction.

As an alternative to proxy, which does involve a bureaucracy and plans and a fairly complex system of doing things—and now under this we'll be delayed by three more years—would it be an acceptable alternative for the government to come out with a similar wage enhancement plan as it did for the child care sector, but that instead of making all these all-female classes go through this onerous process and wait for years to start implementing a wage enhancement program now, not only for child care, which has been in place for a number of years, but for all these underpaid sectors, whether they be homemakers or library workers or whatever?

I think the success in the wage enhancement program in the child care sector says maybe that's a far less bureaucratic way to go, where the government can set down and say: "Okay, this is our long-term goal over the next seven or eight years. This is where we want to be. This is our plan for how much we're going to pay out per year." It would go directly to the worker. There wouldn't be a necessity to file plans or to go to cross-establishment comparators. Have you given any thought to that type of alternative to the proxy method?

**Ms McCuaig:** In fact, we've had a great deal of debate in the coalition since I can remember on exactly that issue. We have come down in favour of still going through the pay equity process. There are a number of reasons for it. One, if I can use this term, is ideological, that there has been a great deal of public campaigning, public education done around women's right to have equal pay. That was started by the women's movement. It's one of the *raison d'être* for the women's movement getting its kickstart.

I think the fact that you can now see in bus shelters, "Woman breadwinner, she has a right to equal pay," the fact that this is commonly accepted—Dianne, it wasn't so long ago when it wasn't commonly accepted. After all, we were only working for pin money and to buy a TV and for a second car and all this sort of stuff, so did it really matter how much we were paid?

Now it's been established, somewhat like Pat was saying, 125 years ago, that we work as much, we eat as much, we want as much. Not only that, we take care, we are the breadwinners. Without our incomes, more and more families would fall below the poverty line; without our incomes, the fact that we are the sole breadwinners in so many families, so pay equity as a justice issue is important.

A wage enhancement grant, I would say—and I congratulate the government for doing it—but remember, when we asked for that, we asked for it as a down payment on pay equity and it's being treated as a down payment on pay equity. We're not looking to have low wages enhanced, we're looking for justice. We're looking to have our wages and the work that we do as women compared to and valued as much as the work that men do.



If somebody wrote you a cheque—the same way the direct operating grant in effect wrote a cheque to child care programs to include staff—nobody is going to say no to that. However, there is bureaucracy in the direct operating grant. There is bureaucracy in the wage enhancement grant. Any flow of public dollars which requires accountability—and we totally agree with strong accountability for public dollars going to services—nobody's going to turn that money back. We think that it should be complimented by a pay equity process.

The other thing is that every year we go through this little process. What will the direct operating grant be? Will they take it away? We watch the budgets to see if the wage enhancement grant is still there, if the DOG still there. What one gets in a grant can be taken away. Pay equity supposedly is a law which in fact guarantees women's right to equal remuneration. We think that's important.

**Ms Poole:** As far as that goes, I would think any type of enhancement program that I was suggesting would have as a component that this is a guarantee and that you look at these over, like I say, a lengthy period of time and say, "This is how it's going to be accomplished," that it isn't sitting there at the end of the fiscal year and wondering whether the government's going to renew its commitment, that in fact this is a set policy in place.

I have just found that the wage enhancements since I guess 1987, when New Directions for Child Care started the process—and in Metro we were particularly fortunate because both the city of Toronto and Metro followed with their wage enhancements for child care workers—I think that when I look at Ontario's wages as compared to other provinces, it's very clear that it had a dramatic impact.

I can see your point, in that you see it as a justice issue and you don't want to lose that flavour, but quite frankly, when pay equity was brought in and the act was passed in 1987, it was to redress gender discrimination and compensation between male and female jobs within an establishment, and the proxy doesn't really fit that particular niche. It's trying to address situations where it's an all-female establishment and there's nothing for them. It's admirable in that, but I think there are other ways you could accomplish the same thing, but much more quickly than having to wait those additional three years and without the bureaucracy.

1520

**Ms McCuaig:** We look at child care reform, at stabilizing child care. We never looked at pay equity as being a cure-all for child care, and if we have underfunded programs out there which are in the main staffed by women, then there are other ways. There's core funding. There are a number of other mechanisms which governments would have to stabilize those programs and to improve wages and working conditions in them. Pay equity was never seen, and we never looked at it, as a cure-all.

Yes, the bottom line is to raise the wages of workers in our sector, but with it goes a justice component, and when we're looking at the comparison, it's true, it is an all-female workplace, but that's what's so systemic about the inequality between men's and women's wages, that that's where the majority of us are found. We're found in workplaces where there are no male comparators. Unless we can find a way to

make pay equity fit us, then it really hasn't done the job for the majority of women.

**Ms Poole:** The last question I had related to the three-year delay in achieving pay equity in the broader public sector. I think it's fair to say that at the press conference you held along with the Equal Pay Coalition you were extremely forthright about your disappointment in the fact that you'd waited two years for this legislation. Since it was first basically announced in the throne speech in the fall of 1990 you've waited day by day and month by month, and then when it came in, it was to delay yet again.

One of the things you said at that time, if I can remember the quote correctly—I have it in one of these little pieces of paper here—was that, once again, the women who were on the lowest rung of the ladder were being asked to wait, and it wasn't a matter of the economy being in such bad shape, which everybody acknowledges it is, it's a matter of this government has to have priorities and these women are the ones who really, constantly, are being asked to wait for justice.

Would you like to tell us about some of the women who are waiting right now and I guess their reaction and what they see? Do they see this as nirvana? Are they really expecting much more than, say, \$350 a year out of this, which I guess by the time it's taxed would come up considerably lower than that? Are they going to have their expectations dashed when they find out how little they're going to get and how long they have to wait?

**Ms McCuaig:** We've had two province-wide hearings on pay equity since 1990. We were very clear with our sector what pay equity would mean to it. The response we got back was, "We wanted an opportunity to address 168, to ask for improvements in 168." We didn't expect to be here asking for improvements to a bill which was backtracking on what was in 168. Our goal was a campaign to improve the extension of pay equity to our sector.

I'm going to ask Lindsay if she'll talk about the women who have been waiting for pay equity and now are being told they have to wait some more.

**Ms Thompson:** Obviously there's a lot of disappointment, and I think there is more expectation of the amount it'll be when it comes out. It has been a long wait. I think it's showing a lack of support, a lack of concern, a lack of caring about children. Obviously the next generation is going to be grown up before it can be cared for with any kind of quality care and consistent quality care. It just says a lot for our profession that people are leaving every couple of years because they can't afford to stay in it, as much as they might claim that they love the profession. That's probably true, but you can't live on what's being made.

**Ms Poole:** There's a really high burnout rate, isn't there?

**Ms Thompson:** There is a very high burnout rate, yes, and not a lot of compensation. I mean, looking at our organization, just trying to keep things afloat, we've had our benefits cut. We used to get four weeks of holidays; we get three now. Things like that don't help. They don't help morale, for sure, and I think right now morale is just kind of levelling out because we really are hopeful.

**The Chair:** Thank you, Ms Poole. Ms McCuaig, Ms Thompson, on behalf of this committee I'd like to thank you



for taking the time out this afternoon and giving us your presentation.

McMURRICH SPROUTS DAY CARE  
GIZHAADAAWGAMIK

**The Chair:** I'd like to call forward our next presenters, from McMurrich day care. Good afternoon. Just as a reminder, you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you could keep your comments a little briefer to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you each identify yourselves for the record and then proceed.

**Ms Maureen Myers:** I'm Maureen Myers from McMurrich Sprouts Day Care, and our organization is also a network member of the Ontario Coalition for Better Child Care.

**Ms Jean Yarwood:** My name is Jean Yarwood and I'm a program staff for McMurrich Sprouts Day Care.

**Ms Penny Smith:** Good afternoon. My name is Penny Smith and I am a director for Gizhaadaawgamik, which is Toronto's only first nations child care centre.

**Ms Jackie Esquimaux-Hamlin:** I'm Jackie Esquimaux-Hamlin and I'm an early childhood educator at Gizhaadaawgamik child care centre.

**Ms Shelley Busawa:** My name is Shelley Busawa and I'm a clerical support worker at Gizhaadaawgamik child care centre.

**The Chair:** Thank you. Please proceed.

**Ms Myers:** We are five women working in the field of child care who do expect pay equity.

Bill 102, An Act to amend the Pay Equity Act, as related to child care workers, is a positive step towards pay equity by way of proportional value and proxy comparisons.

The majority of child care workers are women. Under the existing legislation, Bill 168, many child care workers are excluded from achieving pay equity because there are no male job comparators in their workplace.

At McMurrich Sprouts Day Care, our pay equity plan was posted January 1, 1990, as required by law. The plan lists all job classifications and states, "Pay equity adjustments are not required in this plan because there are no male job classes." Proxy comparisons under Bill 102 will provide the vehicle to include child care workers under the Pay Equity Act.

Our centre, McMurrich Sprouts Day Care, provides quality child care and hires qualified staff. Without pay equity, we cannot ensure quality in the future. Trained, qualified, educated workers have no incentive to remain in the field of child care. We risk losing good staff to other professions. We cannot compete in attracting and maintaining qualified staff without being able to offer pay equity.

We encourage you to implement pay equity as of January 1993, and not January 1994. In a year's time we will have lost many workers and we can no longer be expected to subsidize non-profit child care centres by working for low wages.

Over the years we have striven towards wages equal to those of our municipal counterparts. This goal has never been attained and good intentions do not compensate for good wages. With the same enthusiasm with which we congratulate

the current government on the child care wage enhancement grant, which was to be the down payment on pay equity, and the intent of Bill 102, we urge you to implement pay equity as of January 1993, put a cap on the proxy payouts no later January 1, 1998, maintain the municipal child care worker as the proxy comparator and extend pay equity to workplaces with under 10 employees.

1530

**Ms Yarwood:** My name is Jean Yarwood. I am a program staff at McMurrich Sprouts Day Care. I've been in the child care field for five years. I am qualified with a college education. I am seriously concerned about the future of child care. I can no longer afford to hang in and wait for more promises. I'm discouraged, and I feel that society does not value my profession. I do not receive the recognition and the pay for the work I do. I believe that I'm helping to shape the next generation, the citizens of tomorrow. I know women who have decided to go on to other things and I too am considering moving on. Child care is going to lose its experienced, qualified staff. Who is going to want this job? Who will be caring for the children?

I want to congratulate the Ontario government for the introduction of Bill 102. Child care workers were for the most part excluded from achieving pay equity, as there was no male comparator. The proxy comparison method will permit women in all-female organizations to match job classes with an outside organization. Finally, we are moving forward. I have an incentive maybe to remain in the child care field.

I strongly urge the government to maintain the January 1993 implementation date, to place a cap on proxy payouts no later than January 1998, to keep the municipal child care worker as the proxy comparator and to extend pay equity to workplaces with under 10 employees.

I have waited long enough for the recognition of my right to pay equity. I should not have to wait indefinitely.

**Ms Smith:** As I said before, my name is Penny Smith, and I am the director for Gizhaadaawgamik, which is Toronto's only child care centre for first nations families. We at Gizhaadaawgamik are also members for the Ontario Coalition for Better Child Care. The philosophy of this centre is to strengthen the cultural identity of these children through traditional teachings and the formation of an Ojibway language immersion program. We all realize that you cannot support cultural survival without regaining the language.

This centre is in operation due to the tireless energy of the parents and Ahkinomagai Kemik Education Council, and it is funded through the child care initiatives fund. This funding enables the staff of Gizhaadaawgamik to have salaries that are in line with those at municipally operated centres. When our CCIF funding is finished, we are expected to have a purchase-of-service contract with Metro children's services.

Now you tell me the implementation date for proxy comparators is to be delayed until 1994. As a responsible person, I can see that the delay of one year only enables this to be delayed even further. If the government believes that work of equal value should receive equal pay, then why are there these delays? These delays could mean that the staff of Gizhaadaawgamik will have to take a salary cut until proxy comparators are established. I think this is unfair.

If there is an indefinite amount of time to implement the pay equity plan, if it is based on 1% per year, then there will be a decline in the quality of child care programs. I have been in this field for many years and I have seen many staff leave. The staff go to municipal centres or they go on to other professions. Once again, women who are the sole breadwinners for many families will be told that the work they do is worth less than if a man did the same job. We have waited almost three years since the introduction of pay equity was announced. The government says we are entitled to this and yet once again we are kept waiting. We strongly urge the government to use municipal child care workers as proxy comparators. This could mean a salary increase of 29% to some of our colleagues.

We at Gizhaadaawgamik are committed to providing high-quality child care to first nations families. Pay equity will enable us to attract and keep native ECE graduates. Meegwetich.

**Ms Esquimaux-Hamlin:** Bonjour. My name is Jackie Esquimaux-Hamlin. I am an Ojibway woman of the Sucker Creek first nations reserve. I am an early childhood educator at Gizhaadaawgamik child care centre. Presently, I am on par with the money received by the Metro centres here in Toronto, but once our funding is completed, I will more than likely be expected to take a pay decrease if pay equity is not implemented. My question is, why shouldn't my years of experience continue to be used in providing a culturally appropriate program for first nations children, rather than looking elsewhere? Meegwetich.

**Ms Busawa:** Hello. My name is Shelley Busawa, and I am the clerical support worker for Gizhaadaawgamik child care centre. I was recently employed with the city of Toronto, where pay equity has already been implemented. I work for Gizhaadaawgamik because I strongly agree with the native philosophy.

I am the sole-support parent of two children, and if pay equity is not amended to include child care workers, I will have to take a salary cut or leave my position. As a responsible parent, I cannot take a salary cut and I will have to leave the job I enjoy. I do not like those options and I support the immediate implementation of Bill 102.

**The Chair:** Thank you. Each caucus has about six minutes for questions and comments.

**Ms Murdock:** Under the day care program—I'm thinking of my home town of Sudbury predominantly, because we have municipal as well as private—either you would come under job-to-job or basically you would come under proxy, correct? You wouldn't really come under PV to any particular degree, or would you?

**Ms Myers:** I believe we would come under proxy comparison.

**Ms Murdock:** I'm glad to see that you are supporting the idea of going into the municipal base in terms of finding the proxy group you would compare yourself to, which is nice, because we have had some comment that we shouldn't do it that way. I was wondering, when you were deciding that, what criteria or what arguments did you use to choose a municipal-based group rather than not go that route?

**Ms Myers:** For Metro Toronto, I would say the municipal employees make a lot more money than we do in the non-profit sector. Metro also purchases our service.

**Ms Murdock:** You're looking at it from a Metro perspective?

**Ms Myers:** That's what's closest to us in care.

**Ms Murdock:** Particularly with native day care, Manitoulin Island—I don't even know if they have a day care centre there; I presume they would, given the high native population—would obviously be very different than the Metro situation.

**Ms Myers:** Yes, most likely. I don't know whether there is native child care on Manitoulin.

**Ms Murdock:** Maybe you could answer that.

**Ms Esquimaux-Hamlin:** They're federally funded, because they're on the reserve, the day care for native children.

**Ms Murdock:** All right then, let's go to Kenora. I'm just looking at a day care centre that—

**Ms Myers:** Most likely, if an off-reserve child care centre were not funded through the municipality, it would be what they call an approved corporation, so it would be directly funded by the province. There would be no municipal involvement.

**Ms Murdock:** I'm not even asking about municipal involvement; I'm asking about the reasoning you used in determining that you would support the position of going to proxy-based selection.

**Ms Myers:** Simply because we have no one to compare to. We're an all-female workplace. Our job classifications are all female. If we were able to seek and look outside our own workplace and could even find a male job classification we could be compared to, then we could possibly have pay equity. Otherwise, as it is now, we don't have that and we're not entitled to it.

**Ms Murdock:** From the previous presenters, one of the examples was that a supervisory position was \$23,000 in their group, but in the municipal sector it was \$36,000. So we had a \$13,000 differential there in terms of the same job. That was a minimum. It was \$36,000 to \$42,000, as I recall. Is that differential similar in the private to the public in yours?

**Ms Myers:** I think you'd find a higher differential.

**Ms Murdock:** Higher than \$13,000?

**Ms Myers:** Yes.

**Ms Murdock:** What kind of money are you making?

**Ms Myers:** Our municipal counterpart for doing a similar job to myself or Penny could make upwards of \$55,000. I think perhaps a lot of the average salary in that area for that job would be somewhere between \$30,000 or \$40,000. So there's a larger wage gap there.

**Ms Murdock:** Greater than \$10,000 then, on average?

**Ms Myers:** I think so, yes.

**Ms Murdock:** You looked like you wanted to say something.

**Ms Smith:** I think Maureen addressed it, thank you.



1540

**Ms Poole:** Thank you very much for your presentation today. You've been very clear about what you would like this committee to do and what you would like the government to do. Because in the final analysis there are more government members on the committee than opposition members, we recognize that they will determine the final form of this legislation.

I want to take you back to 1987 when the current pay equity legislation was passed. At that time Evelyn Gigantes was the opposition critic for women's issues. One of the things she said the NDP was committed to was bringing in pay equity legislation in a very speedy fashion. The second thing she said was one of the points you made today, that employment establishments that had fewer than 10 workers should be included in pay equity too.

That being the NDP official position, I think a lot of people and a lot of women's groups expected in 1990, when it was elected, that great things would happen with pay equity. Certainly, a lot of women have said to me that they did expect that the time frames would be speeded up and that it would be extended to more women. Instead, what's happened is that the time frame has been delayed and some of these other promises haven't been kept.

Do you feel that your expectations have been let down? What did you expect the government to do and do you feel it's done what it said it would do?

**Ms Smith:** Are you speaking to me?

**Ms Poole:** Anyone who feels up to answering that.

**Ms Smith:** I very much expected pay equity to have been implemented by this point. Before working in child care, I was a kindergarten teacher for many years. I took a cut in pay to work with younger children because I saw a greater need in that area. That was a choice I made. I was one of those people who was talked about before. I used to earn \$9,000 a year. It was humiliating.

At one point, I received a lot of grants for the job I do. This is an issue about justice. I work very hard. I'm a very capable person. Most of my colleagues are too. Rather than have a grant for my salary, I want something to be a salary. I expected pay equity to have been implemented for women in child care a long time ago. That's one of the concerns I have. If you keep delaying this, you can delay this indefinitely. It can go on and on and on.

**Ms Poole:** I think Kerry McCuaig said it best when, in the press conference—I don't like to quote people without the actual words in front of me, but she said that they're basically going to delay pay equity out of existence. I think that very real concern is there. I think you were here for the presentation by the Ontario Coalition for Better Child Care just earlier. One of the things that quite astonished me, when I first learned it a couple of months ago, was the amount that child care workers will get on an annual basis for a pay equity settlement.

I think Kerry and her group have estimated that \$350 would be the average annual settlement pay equity adjustment. I couldn't believe it because it'll just take decades and decades for you to reach any sort of justice or equity, given those figures. That's why I had mentioned the possibility of

the wage enhancement grants, which were started in 1987, to have a really strong, guaranteed program so that that every year child care workers' salaries would be directly supplemented by this amount until such time that there was a reasonable salary. It just is not acceptable that we pay people more to look after our animals than we do our children, aside from ball players and all those other things.

**Ms Smith:** I guess I share Kerry's scepticism around this. A plan would have to be created in its entirety. Every year I wait to see how much my DOG will be cut by. The staff of our McMurrich Sprouts Day Care, which I am affiliated with, used to receive a very handsome city of Toronto grant. Once our parents made a commitment to the quality of care for their staff and raised salaries, they were almost cut out of the city of Toronto grant. Unfortunately, if the parents had known the areas they could play around with, they wouldn't have raised the salaries as much. It wouldn't have hurt them so badly and the staff would have come up with the same.

There are an awful lot of rules that families and boards of directors don't know everything about. If you're to say to me, "Okay, you're going to have X amount of dollars this year and you're going to have X minus one next year until you achieve pay equity," who signs that? Is it someone who's going to leave their office?

**Ms Poole:** What you're saying is, you need something really reliable you can count on year after year.

**Ms Smith:** Yes, and in the end I need to know I am going to achieve pay equity personally, that my work is of the same value as that other teacher's.

**Ms Poole:** Well, you may. It just may take several decades, if not centuries, to achieve it at this rate.

**Mr Tilson:** Carrying on that point about delaying it and just waiting for ever, there's no question that there are a number of good quality people in child care, and that's a good thing. I get the impression that many of them, like yourselves, are waiting. You're qualified, but you're not being paid perhaps what your qualifications are and you're waiting for something, whether it's pay equity, more funding from the government or something, to keep you in it.

As one of your people just said, it's getting to the stage where you may be forced to leave. It's fine to love working with children, it's fine if that's your niche and you like the job and you can perform it with the good qualifications that you have, but simply to live your life to stay out of the poverty level—whatever all your fine arguments are, you're forced to leave.

I guess the question I have is that this government has said, "Well, we're going to delay it or hold off implementing this policy," and you're saying, "Oh, well, that can go on for ever." Have you, or any of the organizations you belong to, made a request to the government, to Mr Mackenzie, Ms Murdock or any of the other officials of this government, as to what sort of additional funding they are prepared to put in, not just for non-profit day care but for private day care, day care in general? Whatever day care or child care you're into, everyone's experiencing this problem of low pay—at least many are. From another point of view, has this government indicated what its philosophy will be as far as generating more funds to child care?



**Ms Smith:** For instance, the Ontario Coalition for Better Child Care has worked with the government in suggesting ways to implement child care reform. I know the document was well received and parents throughout Ontario played an extensive role in saying what they believe child care should be like for their families.

The government has just come back with its recommendations and I believe organizations will be responding to it in the near future. As to how they're going to generate the funds for this, as Kerry explained before, this is like a make-work program; if you can increase the salaries of workers, they have more money to spend.

**Mr Tilson:** I understand that argument. What I'm saying is, the emphasis on child care—I mean, the money has to come from somewhere. The money has to come from fees or it has to come from the government, and if the government is—

**Ms Smith:** As a parent, I'm astounded that our education system begins at age five and is totally publicly funded, yet my child, if his birthday is after December, cannot enter into that. Why isn't the age limit reduced? Perhaps our society has grown out of the system of child care that is presently in place and maybe we need to look at creating a new system; break down some of those old barriers that are very archaic and get on with something new and innovative.

**Mr Tilson:** I think, with respect, that's the issue: What direction are we going to go in? Preschool, pre-kindergarten, pre-elementary, whatever the terminology is, where are we going to go? This government is saying it's broke, that it simply can't provide funding and that therefore it's going to delay the legislation. That's simply it. Therefore, it alarms me when I hear people like yourselves and others saying: "We can't afford to stay in it. We feel we're good-quality people, we're good, qualified people, but we can't afford to stay in it." That leads to my second question: Whether you have any estimates from your provincial organizations or any other organizations that you belong to as to, if this legislation passes and this delay is going to continue, how many people, men, women, whoever, will leave child care and get into some other line of work.

**Ms Smith:** I personally don't have that information. I don't know if Kerry has that.

**Mr Tilson:** Does it exist?

**Ms Smith:** I'm not quite sure it would, but I can just tell you, from speaking to colleagues who operate other child care centres, that it's very difficult to attract qualified staff without paying them a comparable salary. You have to understand that the quality of child care is directly related to the quality of people working there. My father always says, "You get what you pay for." There's another example of it.

**Mr Tilson:** All of you are making the position, "We must maintain the implementation date that was first suggested and this delay simply is unacceptable," and you've all given your arguments for that. A line of questioning that I'm pursuing with all the delegations is, will this timetable, the original timetable of implementation now as opposed to delaying for three years, because of the lack of commitment by this government to improve child care financially, hurt the very people you're representing, the women, the vulnerable people, the children, of all people the children? You don't

have to be a wizard to know that good people are not going to stay. Economically, they simply can't afford it. They can love their job, they can do whatever they can do, but they simply can't afford to stay. Will your timetable, the timetable that you're suggesting, that all of you are suggesting, given the position of this government, affect not only the vulnerable people you represent but the children?

**Ms Smith:** Absolutely.

**Mr Tilson:** It's a dilemma, isn't it?

**Ms Smith:** No. I can quite honestly say it will affect the children. If you take a primary care giver away from a young child, he goes through months and months of grieving before he can create bonds with a new person. You're right; it will create a terrible situation for the young children.

**The Chair:** On behalf of this committee, I'd like to thank each and every one of you for coming out this afternoon and giving us your presentation.

Our 4 o'clock presenters have cancelled so I'd like to call for a 10-minute recess at this time. The committee stands recessed for 10 minutes.

The committee recessed at 1553 and resumed at 1610.

#### COOK'S SCHOOL DAY CARE INC

**The Chair:** I call this committee back to order. I'd like to call forward our next presenters, from Cook's School Day Care Inc. Could you please come forward. Good afternoon. A reminder to the committee that because of the cancellation and now that we have a group here, we'll be allowing these presenters up to a half-hour for their presentation. The committee would appreciate it if you would keep your remarks a little brief to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Ms Kim Rudd:** My name is Kim Rudd and I'm the executive director of Victoria College Square Day Care.

**Ms Judi Quigley:** Judi Quigley, executive director, Cook's School Day Care.

**Ms Lynn Stubbings:** Lynn Stubbings, supervisor, Victoria College Square Day Care.

**Ms Linda Bevan:** Linda Bevan, assistant teacher, Victoria College Square Day Care.

**The Chair:** Thank you. Please proceed.

**Ms Rudd:** Good afternoon. As I said, my name is Kim Rudd and I'm executive director of Cook's School Day Care Inc, which is an umbrella organization encompassing Cook's School Day Care, Victoria College Square Day Care and Cook's Home Child Care Agency. I am co-chair of the Northumberland child care forum and sit on the board of directors of the children's case coordination of Northumberland county and the Northumberland children's services committee.

Because of these involvements, I am here today to give you an overview not only of our organization but others in Northumberland county and the effects that pay equity and Bill 102 will have on child care in Northumberland county.

First, I would like to give you some sense of who we are. Northumberland county is approximately 115 kilometres east of Toronto and it is comprised of various rural communities,



including a significant agricultural base, scattered over a very large geographic area. In the last decade, child care has grown significantly and become an integral part of our communities.

The Ontario government is to be congratulated for the introduction of Bill 102. The bill retains many of the positive features of the original Bill 168. It is precedent-setting in that it provides public funding to compensate women working in traditional job ghettos. It extends pay equity benefits to approximately 420,000 women previously excluded under the existing legislation through the introduction of two additional methods of achieving pay equity—proportional value comparisons and proxy comparisons.

Bill 102 will benefit child care staff, the majority of whom are women. Workers in this sector are paid less than practically any other professional, even though our profession requires high educational qualifications and brings with it equally high levels of responsibility and stress.

The dedication in this field in Northumberland county is unparalleled. What other profession is paid for 8 hours per day but often works considerably more without compensation; has a day-to-day stress level that most can only imagine; has a responsibility for the emotional, social and educational growth of our children from birth to 12 years; always maintains a level of professionalism that never allows you to express anything but positive, constructive mannerisms; requires that once you complete your initial educational requirements, you must continually upgrade and enhance your qualifications, on your own time and often at your own expense; have several years of experience; the ability to communicate effectively with the public; be exposed to all manner of colds, flus etc; has a significant burnout rate; provides various supports to families and agencies such as the children aid society, and above all, provides a safe, nurturing environment for our children, all this and more for a base rate of \$7.25 an hour?

A recent national study, *Caring for a Living*, funded by Health and Welfare Canada, showed that over 7,200 child care staff working in 969 different child care centres reported wages that hover close to or fall below Statistics Canada's poverty line. The same study found that the average salary in Ontario for a child care worker, excluding the municipal sector, was \$22,983. In Northumberland county the figure for fully qualified staff is \$19,200. For others such as assistants, cooks etc who work in the field, it is considerably less. This includes the direct operating grant but excludes the wage enhancement grant. In recognition of the low wage rates in this sector, the wage enhancement grant was introduced by the Ontario government in 1991 as a down payment on pay equity for child care staff.

Under the existing legislation, the procedure for pay equity achievement covered only those women where female jobs could be compared with male jobs of equal value in the same workplace. Child care staff in Northumberland county were excluded from achieving pay equity as there were no male comparators, the only exception being the family Y.

Under Bill 102, the introduction of the proxy comparison method will permit women in all-female organizations to match job classes with an outside organization. This is a real step forward for which the government should be congratulated. It should be noted that Northumberland county is

comprised of 16 child care agencies, all of which are non-profit, governed by parent and community-based boards. We do not have any municipally operated centres within our county.

However, as much as we welcome Bill 102, there are some areas which specifically impact on the child care sector in Northumberland county, and I would like to draw your attention to these.

Pleading restricted financial circumstances, the government has delayed the implementation date for proxy comparisons by one year, from January 1, 1993, to January 1, 1994. We urge the government to maintain the 1993 implementation date. Pay equity implementation has been like a carrot dangled before our noses, only to be snatched away again. Women working in the field of child care have been living with restricted financial circumstances for years. Enough is enough.

Child Care Reform—Setting the Stage was a clear message from this government that it recognized the need for substantial reform in this sector. I was fortunate enough to have made a presentation at those hearings as well. At what point do presentations stop and reform begin? During that process, it was abundantly clear that the low wages of child care staff subsidize this sector.

We also want to recommend the placing of a cap on proxy payouts. We suggest a January 1, 1998, date. Under Bill 102, employers implementing wage adjustments determined by the proxy method may do so at the rate of 1% of payroll per year until pay equity is achieved. With the salary levels I have just presented to you, you will forgive us for wondering if we will achieve pay equity at about the same time we retire. Worse yet, will there be anyone left in this profession? Will we be able to continue to attract dedicated, caring individuals to this profession or will the realities of supporting oneself be a determining factor? I hope this will no longer be the case. Again, women in all-female workplaces have waited long enough for the recognition of their right to pay equity and they should not have to continue to wait indefinitely, as is the case under the present bill.

There are two other issues I'd like to raise. The first has to do with the comparator. We strongly urge the government to maintain the municipal child care worker as the proxy comparator. If a municipality such as ours does not offer child care, we would be able to move to the next municipality that does. Municipal child care workers are paid an average of 29% more than their counterparts in a non-profit centre. A statistic I would like to add to that is that we in Northumberland county are paid approximately 25% less than our counterparts in Durham, which means if we go at 1% a year, it will take 60 years for us to achieve pay equity. Using the municipal child care sector as a comparator would be a step forward in redressing the historic undervaluing of the work of child care professionals.

The second point is that workplaces with under 10 employees are still excluded from pay equity. This will impact on many women working in small child care agencies such as those in our rural communities. I urge the government to address this inequity in the bill. My suggestion is that they implement the recommendation of the Equal Pay Coalition, which proposed an amendment to the act prohibiting employers from discriminating on the basis of gender in the compensation of employees employed in female job classes. This



would allow employees to file a complaint with the Pay Equity Commission to achieve pay equity. This recommendation may be found in the preamble to the general amendments section of the brief presented to this committee by the Equal Pay Coalition. I thank you for your time.

1620

**The Chair:** Thank you. We have about six minutes for each caucus.

**Ms Poole:** Thank you very much for a very articulate presentation this afternoon. I must say that your figures about how long it'll take you to reach pay equity are even more dire than mine. I had suggested three decades, but you're up to six decades. It's not a very attractive prospect.

I have two questions. The first relates to the municipal child care workers you would like to see used as a proxy comparator. I suspect that government will not listen to that argument, because we have another piece of legislation we're looking at right now, Bill 169, which is the companion piece, where it's basically said that the government has the right to determine in which cases it's the employer, because it doesn't think pay equity should be used to reach parity.

I think what you're really saying is that the municipal child care workers are earning substantially more than other child care workers and you want parity with them. If the government sticks to the argument it's used with its other piece of legislation, it doesn't bode well for your being able to do that, but it certainly would get you up there much more quickly than if you have to use other comparators, say, in the non-profit sector.

The question I had was regarding the wage enhancement grants. You've made specific reference to this earlier in your presentation. What I consider to be wage enhancement grants have actually been happening since 1987.

**Ms Rudd:** The direct operating grants?

**Ms Poole:** Yes, the direct operating grants was what they were called, but they were for the purpose of enhancing the wages of child care workers. I've put this scenario to two of the other child care presenters this afternoon. What if, instead of reaching pay equity via this very long, tenuous proxy method, which does involve a fair amount of bureaucracy, which also involves trying to compare to someone outside your own establishment, you had a comprehensive wage enhancement program which, say over an eight-year period, said, "This is the goal of what we want you to be paid, which would value your work as child care workers, and this is what we commit to you, that we will pay you every year for those eight years, till you reach that level"?

It just seems to me a more direct way of giving you pay equity, because originally pay equity was not meant to go outside the same establishment; it was meant to reverse the gender discrimination in compensation within an establishment by looking at male and female comparators. In your cases you don't have a male comparator, so you don't fit that aspect of pay equity. The other problem is that you have to go outside the establishment.

I'm just wondering, does that kind of concept have any appeal to you, where you reach pay equity but by a different route?

**Ms Rudd:** It would have appeal in that there would have to be guarantees attached that at the end of eight years we aren't eight years behind again. Eight years does seem like an awful long time; 60 seems even longer. We had struck 1998 as a goal. I think we would be reasonable to some flexibility in that, but again, there would have to be a comparison. Who's going to determine that in our organization in Northumberland county, instead of making \$19,000 a year I should make \$24,000 after eight years? Is that reasonable? Am I still paid what I'm worth? Who's deciding what we're worth? In the municipal sector, obviously, there has been a message from various levels of government that this is what the child care professionals in the municipal sector are worth.

My other concern is that there are other sectors paying early childhood educators similar wages. Unfortunately, that's the board of education, which is also government-funded.

**Ms Poole:** I guess this is an ironic situation, where I'm saying you're worth more than you're saying you're worth, because I think you're worth more than they're paying municipal child care workers. I don't see why you would settle for being paid \$29,000, which a municipal child care worker is paid, on average, when a teacher, for instance, who's perhaps teaching kindergarten might be paid \$45,000 or \$50,000 for that same type of work.

**Ms Rudd:** Again, my concern would be that there would be some guarantee that at the end of eight years it would reflect the current economic situation in eight years, not the one when it began. That would be my concern; but I agree. I guess when you've been in this profession for this long you just always think it may never happen, and I think we're at the point where it can happen and we don't want to lose it.

**Ms Poole:** Thank you.

**Mr Arnott:** Ms Rudd, thank you very much for coming in. You've come quite a distance, from Northumberland county, driven quite a piece, braved the highway weather that we might have.

**Ms Rudd:** The Don Valley Parkway.

**Mr Arnott:** My wife is an elementary school teacher, so I know what you're talking about when you talk about flus, colds and so on, because you get every bug that's going.

I was interested, I guess, in your final page. I think in your presentation you very eloquently demonstrated how important your work is and the pride that you take in your work. That's very commendable and I think very important for us to hear.

When you talk about the proxy comparison that you would like to have made with respect to municipal child care—and you're talking about approximately a 29%, 30% difference in the wages between municipal and other non-profit agencies—are you saying that to achieve true pay equity at your agency specifically, the wages should go up about 30%?

**Ms Rudd:** They'd have to go up even more than that. It's not just our agency; it's every agency in our county. We have a municipal government that is not committed to child care and in fact last year almost took it right out of the budget. So we have a constant struggle on that end to maintain.

**Mr Arnott:** The municipal governments have seen their various grants not going up to the extent that they have been,



and they're faced with a number of difficult cost-cutting alternatives. That seems to be the time that we're living in. The 30% increase, where would you think that should come from—in terms of increased fees to parents or greater grants from the provincial government, greater grants from municipal government? What would you think would be the best way to achieve the 30% increase in salaries?

**Ms Rudd:** I don't think the increase in parent fees is reasonable at this time. We have seen, in our area, a great change in the climate. We have a lot of people going back for retraining. We have a lot of people in single-family situations. We are in a situation where I just don't think the public could take it right now in a direct after-tax payout.

I think an increase in taxes in order to pay for pay equity for our sector would turn itself around as far as the government would be concerned and it would be getting it back. We now have more buying power, we now have the ability to go out and purchase, and hopefully it's for our economy. I don't think it's money that is just being handed out and not given back. So I think it definitely has to come from some level of government.

**Mr Arnott:** That's an interesting argument, and it's been put forward by a number of other presenters today. It struck me as fanciful in that if a person thinks they're getting an increase but it's all going to be taxed back or it's all going to go back into the government coffers anyway, it's not a real increase.

**Ms Rudd:** But it's not going back necessarily in taxes off your paycheque; it's going back in the fact that maybe now I'm going to go out and buy that new car I was going to buy, or maybe it might allow me to purchase something else I may not have been able to before. So I'm not so much saying it's a direct tax, but an indirect benefit.

**Mr Arnott:** All right. That's enough. Thank you very much.

**Mr Ferguson:** I want to thank all of you for taking the time out of your schedules, obviously, to come down and make your presentation today.

You've raised two issues, separate and apart from the main issue. Of course, it seems that the number one concern that we've been hearing today from all presenters—you obviously are presenting in favour of the legislation—is the question of timing. I was wondering if you could suggest to the committee just on the question of timing something that perhaps you would view as a little more reasonable, something that you could live with.

**Ms Rudd:** Timing in implementing pay equity, or the payout?

**Mr Ferguson:** Implementation, you're pretty clear on that, but the payout itself. We're looking at—I think you suggested 1998.

1630

**Ms Rudd:** Yes, 1998, five years, and I think that's as long as it should take. As I said when I used the percentage comparisons, it would take us approximately 60 years at 1% per year.

**Mr Ferguson:** I was also wondering, on the question of 1% per year, obviously you're not happy with the 1% a year

and that obviously doesn't sound like a very large amount to most individuals. Could you perhaps clarify your position or expand on your position as to what you think would be a little more acceptable in terms of payout?

**Ms Rudd:** As I said, for instance, the municipality next to us does have municipal child care, all around us actually, and the average wage is 29% higher than the non-profit sector. We in turn are somewhat less than that, lower again than they are. What I'm saying is that I think a 60% increase in our salary, although it would be wonderful, I'm not sure is realistic, over five years. But I think there has to be some commitment that it would be increased at a rate that within five years would at least bring us up to the municipal level of neighbouring centres.

I suppose we could go and compare, as the suggestion came out, to elementary school teachers, JK, SK teachers. Then we'd be talking about a 100% increase or more. So I think what we're asking for in five years is not unrealistic. We're saying 30% within five years for us personally would be something we could live with, but we couldn't live with it spread out over 1% a year.

**Ms Murdock:** I'm sort of caught in an unenviable position, I guess, of thinking back to the years of slavery and in reality women being mere chattels and being expected to work for nothing in the home or wherever. But then, having said that, given the financial constraint, as we're only too aware of, if I'm reading this right, and to pick up on what Mr Ferguson was asking, the 29% per year differential between you and the municipal workers would work out to about a 5.8% increase per year so that by 1998 you would be brought up to 1992 municipal salaries, right?

**Ms Rudd:** That's what I said earlier I don't want to happen.

**Ms Murdock:** Exactly, and I can understand that, but that would mean a 5.8%—the money would have to come from somewhere. I guess I'm asking two questions here. If you don't have it, where do you get it, number one, and number two, would you apply the same kind of percentage requirement to the public sector and the private sector?

We've been listening to business with its concerns and the job losses, particularly in the manufacturing industry. At 1% a year of payroll in the previous year, they're claiming to find that as onerous as if it were, say, 6%.

I realize that basically what the private sector in day care is asking is that it receive the public sector equivalent, and I'm wondering if you're applying that to the private sector as well in other areas, because this bill applies not just to day care but to everything. Do you know what I'm saying?

**Ms Rudd:** I guess I'd be looking at two things. One is that primarily in child care we don't have an option. There isn't a sector I can think of personally that is strictly private that has this many women working in it that has no male comparator.

The other thing I guess I would question is that our school board, for instance, absolutely had to have pay equity implemented by January 1 of this year. That was accomplished. I guess my point is, it can be done. I'm not exactly sure where they found the money, but because it was legislated they did. My property taxes didn't go up.

I think maybe we need to look at how important this is to our society. Is this a societal issue? I think it is. For some reason, the perception is that education of children starts at 3.6 years of age when they enter the school system. It doesn't, and I really feel that the benefit to society of quality care when they are younger is something we as a society will reap the benefits of for years.

**Ms Murdock:** One of the points that was made earlier by one of the other presenters was in terms of the whole education system and our mentality and mindset towards it having to change too, but you can't change all things all together.

**Ms Rudd:** No. Believe me, we know.

**Ms Murdock:** Unfortunately. I wish we could, but it's just not to be.

**Ms Rudd:** I think the other point is that because it is a female-dominated job—and in our county it is only female; I think once there was one male who worked in child care as a university student in Northumberland county, and that was precedent-setting—we have tended to accept the responsibility.

Judi and I are partners in that we share the three organizations, each with our own talents, and we both take the summer off without pay in order to help the day care get through, because fortunately we're in a position where we can do that. We still do our work, we just don't get paid for it. You would not find too many professions that would expect people to do that, but that's what is basically expected. I think maybe because we are women we have a sense, or some way back this has been embedded in us, that we have a responsibility to these children and won't sacrifice the children. I think that's what it comes down to.

I don't want to see us get to the point where we say, "Enough is enough, we're going to look out for us first." I think Manitoba did that at some point a couple of years ago. They just closed the day care centres down and all walked out. I don't want to see us get to that point here.

**Ms Murdock:** For sure.

**The Chair:** Ms Rudd, Ms Quigley, Ms Stubbings and Ms Bevan, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and giving us your presentation.

#### REGISTERED NURSES' ASSOCIATION OF ONTARIO

**The Chair:** I'd like to call forward our next presenters, from the Registered Nurses' Association of Ontario. Please come forward. Good afternoon. Just as a reminder, you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you would keep your remarks brief so that there's time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Ms Pam Callahan:** Good afternoon. My name's Pam Callahan. I'm a member of the board of directors of the Registered Nurses' Association of Ontario. With me is Kathleen McMillan, also a member of the board of directors. Her portfolio is responsible for socioeconomic status. As well, Aruna Papp is the policy analyst at our association.

We would like to keep our comments brief today and let you know that we will be following our comments with a written submission for you.

At this time, we would like to comment that the Registered Nurses' Association of Ontario has a keen interest in achieving pay equity in Ontario. Nurses have been waiting a long time to achieve pay equity. In fact, nurses have had a long-standing interest in pay equity in the province of Ontario.

Back in the early 1960s, nurses were lobbying for change with respect to pay and fair pay. We recognize that these times are recessionary, that there is fiscal restraint and that everybody is under the gun to manage their money properly. However, we believe that equal pay for work of equal value is a social justice issue. It should not be sacrificed because of recessionary times.

Bill 102 essentially delays or stalls the process of achieving pay equity in Ontario. It limits the rights of women and it attempts to exclude the rights of some women based on the size of their employment setting.

**Ms Kathleen McMillan:** To continue on Pam's remarks, the RNAO believes that pay equity makes economic sense, that if you improve the financial status of women, this allows them to contribute to the economy through increased purchasing power.

Pay equity is especially relevant to immigrant women, for whom entry-level jobs are often found in small workplaces which would be excluded under the proposed bill. We also believe that pay equity is a health issue. Single-parent, female-headed families are disproportionately among the poor in Ontario and poverty and ill health are inextricably linked. Most of the illnesses that the poor are experiencing are preventable. They are due to malnutrition and infection. We believe that pay equity would help to contribute to a reduction in preventable illnesses among the poor.

For too long women's work has been undervalued and underpaid. Women's work is often invisible, but it is socially essential, such as that of our colleagues the child care workers who just presented before us. Nursing work requires high levels of knowledge and skill to respond to the complexities of the human response to illness and to assist people to stay healthy. For example, nurses provide pre-natal health teaching to first-time mothers. We counsel families coping with chronic, debilitating illnesses. We help to create an environment that supports families in the crisis of bereavement.

#### 1640

**Ms Callahan:** Registered nurses have made an enormous contribution to the health of Ontario's citizens. This cannot go unrecognized. We can and we will continue to provide excellent services. However, we may not remain silent. We plan to speak out and we plan to assist in health care reform. There is money in the system; the problem is that it's unfairly distributed. There are 10,000 physicians in this province who receive 9% of Ontario's health care budget, while 80,000 registered nurses get a mere 1.25%. We believe there's room to change.

The Registered Nurses' Association of Ontario represents approximately 14,000 registered nurses, from student to retired: nurses working in public health, nurses in acute care, nurses in clinical research, in education and administration.



We believe that the time for pay equity is now. We must ensure that the reform of the health care system is not carried out at the expense of those least able to bear the burden. The RNAO is committed to achieving pay equity, and we are speaking out not only for nurses but for vulnerable women throughout this province. We are speaking out not only for nursing, we are speaking out for the health of Ontario's citizens. The time to act is now.

**The Chair:** Thank you. Questions or comments? Mr Tilson.

**Mr Tilson:** The question I have is, it does get to be a bit of a broken record, but I am concerned as to where the money's going to come from. I mean, we're all taxpayers, no matter what we're doing. We're all paying taxes, we're all looking for government to provide services, and at the same time we have to pay for these services.

I look at the emphasis of this government on the whole issue of transfer payments to hospitals and how it has reversed its promise that it made a year ago, which I'd like to hear you comment on, because that indirectly affects this subject, because where in the world are hospitals going to get the money to pay for these things?

You know, you look at the lack of emphasis on health care by this government, whether it's hospitals, universities, the various partners that we have in this province, and hospitals are one of them, and then we look at people like you coming forward with quite legitimate concerns, quite legitimate issues, the unfairness of it. Then, I guess, at the same time you put on your taxpayer's hat, which I can't believe you don't do periodically. Where in the world is the money going to come from? Are you saying, "Oh, it's only going to cost X dollars," or what are you saying? Where is the money going to come from?

**Ms Callahan:** What we're saying is that there's money in the system. What we're saying is that money is unfairly distributed. What we're saying is that there is opportunity and room for improvement. I would like to ask, with all due respect, of the Minister of Labour where the money is coming from. I think the question remains to be answered by the government to provide some fiscal accountability for this.

However, I think that's an issue that can be dealt with. It's an issue that if we look at health care reform and managing the money in a responsible manner, we just need to look at the figures and where the dollars are being spent. There is room for improvement. We can achieve pay equity within this province within the budget we have.

**Mr Tilson:** Very legitimate questions. I go then to the next question, and the next area is, are you afraid that if the timetable is met that, as has already happened with some nurses, there are layoffs, that hospitals say, "Oh, yes, well, we're going to do that, but sorry, we've only got"—in other words, you have the minister criticism, and that's legitimate. You hear the Liberals and the Tories doing that all the time, quite legitimate criticisms. You do the same thing. But then we get down to the hospitals that have so much money to put forward on whatever programs they're putting forward, and are you afraid of layoffs? Are you afraid that certain nurses will be laid off because of the timetable insistence?

**Ms McMillan:** I think that is a potential problem and in fact we have seen that, but we still don't feel that the burden of paying for pay equity should fall on the people who are hoping to achieve pay equity.

The other thing too is that the Registered Nurses' Association of Ontario fully supports the ministry's focus on restructuring the health care system away from an illness model to a preventive model. We really believe that doing this will cause moneys to be freed up, because we're investing our money in a very expensive end of care and treatment. We're spending a fortune on the last six months of people's lives instead of putting the money into prevention. That's why we're saying that these moneys are there but that they need to be restructured and refocused.

**Mr Tilson:** Thank you. Mr Arnott has some questions.

**Mr Arnott:** Thank you very much for coming in and presenting your concerns to us.

I think you made a very interesting comment about health care costs in your last statement, a lot of them being in the last six months of the patient's life and transferring the emphasis on prevention instead of acute illness. I know that's the government's intent.

You're a health care professional. Do you agree, or am I mistaken, that we're still going to have those costs being incurred? People are still going to age, become older, eventually becoming ill and pass away.

**Ms McMillan:** That's of course true. That's part of the life cycle. But with improved standards of living we have seen an improvement in the health of elders. I believe that's an important issue. We know that poor health is inextricably tied to poverty. We have lots and lots of research to support that.

For example, one of the biggest problems in our health care system is elderly, poor women who have poor health and who cost the health care system a lot of money. If pay equity had been achieved in the past so that these impoverished women had an adequate income and were able to put money into a pension so that they were living at an adequate standard of living now, then this might not be the problem we're having now.

**Mr Arnott:** Yes. If we're all richer, we're all much better off. There's no question about it.

**Ms McMillan:** No, but I think there is a mean that is achievable. What we've seen in this province in the last five years is a widening and an increasing discrepancy between the impoverished and the wealthy.

**Mr Arnott:** I have a second question that relates to a comparison one of you drew. It was a very striking comparison between doctors' salaries and nurses' salaries. I forgot what the percentage was. Could you give me that again?

**Ms Callahan:** Certainly; 9% of the health care budget goes to physician resources.

**Mr Arnott:** Okay. There are two ways to look at it: Either nurses are underpaid or doctors are overpaid.

**Ms McMillan:** Or both.

**Mr Arnott:** Yes, or both. Do you think doctors are overpaid?

**Ms Callahan:** What I think and what our association believes is that there is room for change within the system.



We have had some studies. Recently the Barer-Stoddart report pointed out that we have an oversupply of physicians within the country. We know that the schools are graduating more physicians than we need. We know that nurses can provide excellent skills and care to people in communities, and certainly if we had an expanded role of a nurse in a variety of different settings, we could probably manage the health care system within the dollars we have by restructuring the ratio of care providers.

**Mr Arnott:** Thank you.

**Ms Callahan:** Thank you for your question.

**The Chair:** Mr Tilson, one brief question.

**Mr Tilson:** I have one other question, which is similar to questions I've asked other delegations, particularly the health care and day care people. If you don't feel that your salaries are being raised to the level you feel they should be at, is there a fear that—as did happen a number of years ago where a whole slew of nurses left this jurisdiction in Ontario and went to other jurisdictions, whether it be the United States or other provinces, because of bad policies of a particular government.

**Ms McMillan:** I think the cyclical shortages and overproduction of nurses are far more complicated than just salary issues. This is something we have seen cyclically, in history back to the turn of the century, and I wouldn't say that money is the only issue that creates that problem.

1650

**Ms Murdock:** Actually, Mr Arnott sort of got into where I was going to head in terms of the 9% and the 1.2% for nurses, and I wondered, from the way you had said it, whether or not you were suggesting that money be taken away from the 9%? The health care budget, out of the total budget, is over 30% of the government's package. Are you suggesting that the 9% be dropped and the 1.2% be increased, or that within the confines of the health care reform initiative, where the idea is to move to community clinics rather than a hospital base and there would be a change, as you suggested, inevitably, I think, towards other health care professionals being utilized or services being utilized other than physicians in the end or that you would utilize different kinds of skills, it can be managed within the health care system? I think the long-term planning is looking at that very thing you've suggested.

But in terms of all the other ministries that exist—I guess right now there are what, 26? I realize that you are health care professionals and that therefore your focus is obviously on your own milieu, but having said that, you also said that government can and has it within its own management capabilities of finding the money within its own system and the Minister of Labour should do so.

This is a little off topic. I will give an example. The Ministry of Tourism and Recreation announced \$14 million for a skidoo trail. In my riding, the immediate outcry was, "Why are you spending money on skidoo trails when our health care system is so badly in need of doctors," because we don't have a lot of doctors in the north.

**Mr Tilson:** Why are you doing it?

**Ms Murdock:** Part of that is that the whole thing is that individual ministries are allocated so much money, and once they've got it, let's just say they don't go passing it off

generously, "Oh, we've got \$2 million extra, so we'll give it over to health care." They will spend it within their own ministry. I'm just wondering how in other areas you see utilizing that and then whether or not doctors should be reduced and nurses increased.

The other question I have is in relation to RNAO itself in terms of your salary levels and where you sit in the scale of wages, generally, so it's approximate.

**Ms Callahan:** There were a number of questions in your question, so you may have to repeat them. I'll attempt to answer the last question first. In terms of the membership of RNAO, we do represent, as I indicated, a wide variety of nurses throughout this province. Over 50% of our membership is made up of front-line clinical staff nurses. Our other members are administrators, educators, and certainly with some of the shift in salary ranges, we are seeing that there is a much smaller differential between the different groups, if that was your question, between the different categories, if you will, of nurses, whether it be administrator, educator, clinical, front-line or care giver. There is not the degree of expanse between those groups.

**Ms Murdock:** given that nursing is predominantly female and you would more than likely move to a proxy system, you'd have to find some career that's equivalent in skills and so on, which would put you at, I presume, a different category, would it not? That would be the whole basis of this exercise. If you found a male job group that would be—

**Ms Callahan:** I think the whole basis of the exercise is recognizing equal pay for work of equal value, and that is certainly what our position is, if you're asking from the association's perspective.

**Ms Murdock:** You must have been looking at this. This has been discussed since 1987. You haven't been sitting, knowing that it's coming—

**Ms Callahan:** As I said, we've been discussing this since the 1960s.

**Ms Murdock:** But knowing that, I guess what I'm asking is, what group are you looking at in terms of comparator?

**Ms McMillan:** If I can interrupt, I think that's very difficult to say, because nursing is not a homogenous group, so it would be in terms of the different job categories within the profession. For example, a nurse scientist with a PhD would be compared, I assume, to another scientist and a clinical nurse who's giving care at the bedside would be compared with someone else who might require the same kind of knowledge and skill. I would expect there might be a difference between those two, so it's very difficult for us to say and who would we say would be our logical comparator group? It would be much easier if it were a homogenous group, but it's not.

**Ms Murdock:** So you don't have any objections to utilizing the method suggested in Bill 102 in terms of applying to the Pay Equity Commission to find a proxy comparator group?

**Ms McMillan:** No. Our concern is primarily the timing, the fact that the bill is not introducing the legislation in the way we had initially expected. We've been waiting a long time. We are concerned that it's being stalled and put off.

**Ms Murdock:** The payment date?

**Ms McMillan:** Yes.



**Ms Murdock:** Okay.

**Ms Poole:** I know Elinor Caplan has a number of questions for you, but I just wanted to make one comment before we go to Elinor. I think, Pam, when you answered Mr Arnott's question about whether doctors were overpaid, you showed exceptional diplomatic skills worthy of any cabinet minister. So if in the mid-1990s you're looking for a career change, we can offer you a candidacy of a riding of your choice. We'd be pleased to have you join the Liberal cabinet. There's my offer out of the way; now for the tough questions.

**Mrs Caplan:** Just to put things into some perspective—and I am quite familiar with both pay equity and the situation of nurses—I'm surprised the parliamentary assistant to the Minister of Labour would not be aware that nurses have been compared to pastry chefs in the examples of the kinds of comparators that have been found. What I found particularly galling was that nurses were paid less than the pastry chefs in a hospital. In each employment situation your members are going to be compared to different occupations. The whole essence of pay equity is that you're not looking for the same work, but you are looking for work of equal value and it could be anywhere from the maintenance department to the bakery. It's then the opportunity that staff have within the concept of pay equity to make the argument and negotiate as to the value to the employer.

I know the existing law has frustrated nurses to a large degree, although there have been many benefits. Most of the frustrations have been the lack of willingness to negotiate by some of the employers, and I'm very aware of that frustration from my conversations with the Ontario Nurses' Association.

But I find some of your comments particularly interesting, because for the first time what you've really said, what I heard you say—and I'll ask you to just verify that, because I also see Bill 102 as a giant step backwards—would you agree it is a step backwards, that it does not even begin to implement that which was put forward in the package of 1987 and is a major disappointment, especially coming from the NDP government that said it was going to do so much more?

**Ms Callahan:** We believe this is a stalling mechanism, that through this the process will not be achieved in the dates outlined under the original act, and that's very concerning to our members. We have heard from a number of nurses who have been working to achieve pay equity within their own settings for a very long time, and this is not respecting the process.

**Mrs Caplan:** A few plans have been developed and negotiated, as I understand, although very few. But one of the interesting things I found, through the discussions of the impact of the existing legislation, is that when Gerry Phillips announced in March 1990 that proportional value was going to be a tool available, that many of the plans have already begun to use and implement proportional value within the existing time lines and there is a fear that this legislation in fact, as a step backwards, will delay further the implementation of that policy which has been in place since 1987.

1700

There are also grave concerns because of some of the estimates that we have about what the effect of the proxy comparator might be, especially at a time when you have the

government, rather than looking at the kind of restructuring that would free up some of those wasted resources—I think you said it very well and very diplomatically—within the health system in particular—I agree with you that the resources are there and that nurses should have the first call on available resources as far as transfers. When you see the priority that the existing government has set in place, what you've found is that the money has gone to those—in the first year, if you take a look at the impact of the wage increases to OPSEU, to the doctors—\$474-million, almost a half-billion-dollar increase in that first year—and the increases that have gone to teachers, that's where the money has gone and that's partially what's got us in this huge conundrum and deficit problem right now also. But the money that the NDP spent for its priorities went to the haves, as opposed to those who have been disadvantaged, and then it's cut back on the support for pay equity that was promised, so nurses are losing their jobs as a result of the policies of this government.

One of the concerns that I have with the proxy comparator is that this NDP government says that's not going to come into place until 1998, well beyond the mandate of its government. Cynically, my colleague mentioned 1995 as an important year for the NDP. That's going to be the election year.

**Ms Poole:** That's when the payouts start.

**Mrs Caplan:** That's when the payouts are supposed to start and the commitment of 100% funding, but we've seen that they haven't done what they said they were going to do. They're not doing it now. This is, I agree with you, a betrayal of women who believed that they were going to come in with a better plan.

The question that I would have within that context is, unless major changes are made, in Bill 102 in particular, do you think that it should be supported or defeated?

**Ms Poole:** Or amended.

**Mrs Caplan:** Well, if they won't amend it substantially; unless there are substantive changes made to this existing piece of legislation as we see it today.

**Ms Callahan:** That's a very difficult question to answer.

**Mrs Caplan:** Remember, if this is defeated, the existing legislation stays in place.

**Ms Callahan:** Right, right. We have a lot to lose either way. I think the commitment of this government was to achieve pay equity. We believe that we should achieve pay equity and we need to push for that process. I'm not directly answering your question, I realize—

**Ms Poole:** With diplomatic skills.

**Ms Callahan:** —and it is, I have to be honest, a very difficult one to answer at this point. I'd like to defer that to our written submission.

**Mrs Caplan:** I'll be looking forward to hearing what you have to say, because I agree with you: I think that Bill 102 is a step backwards and it puts off into the future for possibly another government. I think that the women, particularly nurses, are feeling quite betrayed by the NDP.

Do I have one more question on Bill 169?

**The Chair:** If you want to make it very brief.

**Mrs Caplan:** Yes. Bill 169 deals with the definition of "employer." You haven't mentioned anything about that. I

know that nurses have a special interest in that because of the Haldimand-Norfolk case. I wondered if you wanted to make any comment on Bill 169 and the implications, particularly for nurses.

**Ms Callahan:** I think that the Haldimand-Norfolk case was a precedent-setting case. We need to ensure that those precedents stay.

**Mrs Caplan:** Bill 169 changes that. Are you aware of that?

**Ms Callahan:** I may have to refer to my notes.

**Mrs Caplan:** Bill 169 allows the government to determine who is the employer when the government is not the employer, not only for the purposes of pay equity but for any reason.

We've already heard that the Frontenac-Addington case would not have been permitted, we have heard that the McKechnie Ambulance Service case would not have been permitted and I think if you look carefully, you'll see that it has huge implications as well for the Haldimand-Norfolk case. You haven't mentioned that in your brief. Since the nurses had a special interest in that, I thought you might want to comment further on that. I see that as well as a betrayal certainly of what Evelyn Gigantes had to say when she was Minister of Health and withdrew support for the Haldimand-Norfolk case. Certainly, her statement said that she was going

to do one thing and here they've done exactly the opposite. I just want to draw that to your attention.

**Ms Callahan:** Thank you very much. I'm just referring to my notes here. In fact, I have a comment to myself that this is the case. I'll have to go back and take a look at that further and possibly we'll clarify that further. Thank you for bringing that to our attention.

**The Chair:** Ms Callahan, Ms McMillan and Ms Papp, on behalf of this committee I'd like to thank you for taking the time out this afternoon and giving us your presentation.

**Mr Tilson:** Mr Chair, in looking at the draft, will the meeting start at 9:30 or at 10?

**The Chair:** Promptly at 9:30.

**Mr Tilson:** So the Association of Local Official Health Agencies is attending?

**The Chair:** Yes. They are confirmed.

**Ms Murdock:** I just want to advise that the ministry staff for both Bill 102 and Bill 169 are seated over there for the benefit of any of the members of the committee, if they have any questions or comments or requests or whatever.

**The Chair:** Thank you. Seeing no further business before this committee, this committee stands adjourned until promptly at 9:30 tomorrow morning.

The committee adjourned at 1707.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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- \***Acting Chair / Président suppléant:** Ferguson, Will, (Kitchener ND)
- Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- Carter, Jenny (Peterborough ND)
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- Harnick, Charles (Willowdale PC)
- Mahoney, Steven W. (Mississauga West/-Ouest L)
- \*Malkowski, Gary (York East/-Est ND)
- Runciman, Robert W. (Leeds-Grenville PC)
- Wessinger, Paul (Simcoe Centre ND)
- \*Winner, David (London South/-Sud ND)

\*In attendance / présents

**Substitutions present / Membres remplaçants présents:**

Arnott, Ted (Wellington PC) for Mr Runciman  
Caplan, Elinor (Oriole L) for Mr Chiarelli  
Ferguson, Will, (Kitchener ND) for Ms Carter  
Lessard, Wayne (Windsor-Walkerville ND) for Mr Morrow  
Murdock, Sharon (Sudbury ND) for Mr Wessinger  
Poole, Dianne (Eglinton L) for Mr Mahoney  
Tilson, David (Dufferin-Peel PC) for Mr Harnick

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Deller, Deborah

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Second Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 19 January 1993

### Standing committee on administration of justice

Pay Equity Amendment Act, 1993

Public Service Statute Law  
Amendment Act, 1993

Chair: Mike Cooper  
Clerk: Lisa Freedman

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## Assemblée législative de l'Ontario

Deuxième intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mardi 19 janvier 1993

### Comité permanent de l'administration de la justice

Loi de 1993 modifiant la Loi  
sur l'équité salariale

Loi de 1993 modifiant des Lois  
en ce qui concerne la fonction  
publique

Président : Mike Cooper  
Greffière : Lisa Freedman

Publié par l'Assemblée législative de l'Ontario  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 19 January 1993

The committee met at 0957 in room 228.

PAY EQUITY AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT LA LOI  
SUR L'ÉQUITÉ SALARIALE

PUBLIC SERVICE STATUTE LAW  
AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT DES LOIS  
EN CE QUI CONCERNE LA FONCTION PUBLIQUE

Consideration of Bill 102, An Act to amend the Pay Equity Act / Loi modifiant la Loi sur l'équité salariale, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act / Loi modifiant la Loi sur la fonction publique et la Loi sur la négociation collective des employés de la Couronne.

**The Chair (Mr Mike Cooper):** Let's call this meeting of the standing committee on administration of justice to order. We'll be continuing with our review of Bill 102, An Act to amend the Pay Equity Act, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act.

### ONTARIO NURSES' ASSOCIATION

**The Chair:** Our first presenters are from the Ontario Nurses' Association. Good morning. Just as a reminder, you'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks shorter than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could each of you identify yourself for the record and then proceed.

**Ms Ina Caissey:** Good morning. My name is Ina Caissey. I'm the president of the Ontario Nurses' Association. With me are Lesley Bell, associate director of government relations, Mary Hodder, associate director of labour relations, and Lawrence Walter, research officer. As well, our legislative committee is present today. This committee does represent our membership across the province.

I will be keeping my comments brief today as we do want to leave more time for responding to questions.

As president of the Ontario Nurses' Association, I am here today to represent the views of over 50,000 staff registered nurses in this province. The Ontario Nurses' Association, as the voice of these registered nurses who work in hospitals, community health, industry, nursing homes and homes for the aged, brings a unique perspective to these committee hearings.

With a union membership composed primarily of women, we are appalled that this government would agree to perpetuate one of the serious wrongs of our society, forcing working women to carry the burden of wage discrimination. The government's proposed amendments under this legislation will effectively erode any possibility of ever achieving pay equity for our members. The proposal to postpone for another

three years, until 1998, the deadline to achieve pay equity in the public sector is not only shocking but unacceptable. This government would never have supported such actions while in opposition.

Employers in the public sector were given a full five years to manage the elimination of historical pay inequities. Now the government is giving them eight years and expecting that working women will sit back and accept this major change in the original legislation. We will not. We expect this government to meet its original commitment to build on the progress made by the previous government towards full pay equity.

Last January, Premier Bob Rae reassured working women that the government was committed to pay equity. "I think it's important to send a clear signal that even in the toughest of circumstances we're not going to forget the social justice agenda." Then, last December, the Minister of Labour, Bob Mackenzie, confirmed the Premier's statements. The Labour minister said, "This government is fulfilling its strong commitment to correct the historic and systemic undervaluation of women's work."

But what we see before us in Bill 102 shows that the government has blatantly reneged on its promise to right the historical wrongs in women's wages. The amendments in the proposed bill do not merely delay pay equity; they begin to dismantle hard-fought gains. In our view, any amendments contemplated before the legislated comprehensive review in 1995 must be based on the fundamental guiding principles currently contained in law.

ONA has already put forward this position to the Minister of Labour in at least three separate submissions during the last three years. Unfortunately, it appears that the government has chosen not to hear us. In our view, Bill 102 is not only flawed but fundamentally misdirected. For example, the proposal to extend the deadline for achieving pay equity in the public sector from 1995 until 1998 is to break its pledge to working women. This deadline extension would also clearly go against the fundamental principles contained in the current law, in which affirmative action is to be taken.

We are extremely concerned that employers who should have and could have completed pay equity using job-to-job comparisons will now have a further monetary incentive to postpone and avoid job-to-job comparisons. Public sector employers we bargain with will be able to save three years of retroactive adjustments by finding a way around job-to-job comparisons and by using proportional value effective January 1, 1993, instead of January 1, 1990.

We also reject the government's amendments regarding proxy comparison methods. The proposed initiatives contravene the fundamental principle of comparing the compensation of female job classes to male job classes for pay equity purposes. Comparing female job classes to female job classes is unacceptable.

Postponing pay equity comparisons for the proxy method to 1994 effectively means that the wage gap has probably narrowed substantially between our members and their comparators. Why? Since 1990, many employers have simply frozen male wages or made other reductions.

It is also insulting and detestable that there is a proposal before us to prescribe limitations for the current obligation to maintain pay equity. As this government knows full well, the Ontario Nurses' Association has entertained extensive litigation on the issue of pay equity maintenance before the pay equity tribunal in cases involving Glengarry and Lady Dunn hospitals, and now these hospitals are having the tribunal's decisions judicially reviewed. The requirement to maintain pay equity must be dealt with by the tribunal, which has been given the power to interpret the legislation. In addition, we strenuously object to the amendment providing for retroactivity when limitations are prescribed on the requirement to maintain pay equity.

Taking rights away is an objectionable matter that this government should not take lightly. In closing, I want to state as strongly as possible that this organization expects the government to maintain and build on the progress towards the implementation of full pay equity. Anything less is unacceptable.

We would be happy now to answer any of your questions.

**The Chair:** Thank you. Questions from the government side? Ms Murdock.

**Ms Sharon Murdock (Sudbury):** Thank you very much for coming in. I was trying to read as I was listening to you. I know that you have summarized your presentation, but on page 5 the paragraph states: "It is for this reason as well that we submit the proposed definition for when pay equity is achieved using proportional value." You propose "to delete the phrase 'representative group of male job classes' and replace it with 'male job class or male job classes.' It may be feasible to undertake proportional value comparisons using a male job class in some circumstances." I'm wondering if you could expand on that in terms of whether it's the language or the particular group.

**Mr Lawrence Walter:** It primarily is the particular group. We're thinking primarily of a nursing home where the salary structures have been more or less maintained the way they have been for some time and where we think it would probably be feasible to make a comparison to the administrator of the home, which has traditionally been a male job. You could do that without getting into wage lines and that sort of analysis for proportional value.

**Ms Murdock:** So this is specific to nurses or the nursing association rather than a piece of legislation that governs all kinds of workplaces?

**Mr Walter:** Certainly our comments are specific to the members we represent, who are nurses.

**Ms Murdock:** I'm presuming that you worked this out. Have you looked at how that change in language would affect other workplaces or have you looked at it only in relation to the nursing association?

**Mr Walter:** Our proposal is to leave it broader than just a single male job; our proposal is to leave it as a single male job or more than one male job. What we don't really like is the "representative group" of male jobs, because we have

found already in our past experience that we're running into all sorts of litigation over terms like "representative group."

We're saying we think that in some circumstances you can do proportional pay equity using one male job and in other circumstances you may need more than one male job, but to get into definitions about a group of male jobs, we think, is leading into litigation rather than furthering things.

**Ms Murdock:** Yesterday we had the Equal Pay Coalition come before us. Much of its presentation was on language, the use of certain words such as "proxy" and so on. I haven't read your whole presentation yet and I will do that, but are you also concerned about that and, if so, what specifically?

**Mr Walter:** I certainly understand the Equal Pay Coalition's view on language, but our position is that I think that language has been in the public arena for at least three to four years, and to really try to change it at this point may lead to more confusion than leaving it the way it is. So we really haven't made in our submission any points on language other than the representative group of male jobs.

**Ms Murdock:** That's one of the reasons why I honed in on that.

**Mr Walter:** And again in that case it's because of our experience in litigating other language like that.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Sharing my concerns around your statement about perhaps using one male job, the idea of using one doesn't really allow for a kind of base. I mean, don't you see a danger inherent in that?

1010

**Mr Walter:** Well, there are really two points. The first point is that we did leave it broader so that in some workplaces you may need more than one male job. In nursing homes, our view has always been that nurses look to the administrator and compare their jobs to the administrator. I would also like to say that in hospitals, nurses look to doctors as their comparators, but unfortunately doctors aren't employees of hospitals. So we would extend this analysis to hospitals if we could, but it's not possible. But certainly in nursing homes, that is the top job in the nursing home. The administrator is the job nurses look to as being a job they think they would be able to proportionately compare to.

That's why that analysis is set out for a single male job in nursing homes. In other workplaces, it may be that the female-dominated jobs look to other male-dominated jobs as a possible comparator or a range of male jobs, but in nursing homes it is certainly the top job, the administrator job, that they look to.

**The Chair:** Further questions? Mrs Caplan.

**Mrs Elinor Caplan (Oriole):** Yesterday we had some questions that were raised about the comparators of doctors and nurses. I know it's been said that in the area of primary care nurses are competent and able to provide up to about 60% of the services that primary-care doctors provide and do so on a fairly regular basis in the provision of care. There were questions around the difference of income. We know that 90% of doctors are on a fee for service and that their average income in Ontario is about \$100,000 or \$125,000 annually.



What is the average income for nurses or nurse practitioners who would fall into that comparative category in Ontario? Do you have those figures among your membership?

**Ms Lesley Bell:** The top wage rate for nurses with 10 years' experience for our association is \$52,000.

**Mrs Caplan:** Ten years' experience?

**Ms Bell:** Yes, and about 48% of our membership is at that level.

**Mrs Caplan:** Forty-eight per cent, and that's with 10 years?

**Ms Bell:** Or more.

**Mrs Caplan:** I asked the question more for the record because there were some questions around those comparators and I know that the committee would be interested in having the numbers. We didn't have those yesterday.

I don't have a lot of questions, and I know that Ms Poole wanted to ask some questions as well. You haven't made any comment on Bill 169, which is the companion piece. While it says for the purposes of pay equity and for other reasons the government will determine who a crown employee is, there's some question as to whether or not this will have any effect on nurses.

I'm just wondering whether you've looked at that and if you have any comments on that legislation as well. It goes far beyond pay equity. While it is packaged in the guise of pay equity, it has, in my view, more to do with ambulance drivers and agencies of government as opposed to nurses in particular. But I wondered if you'd looked at that.

**Mr Walter:** Yes, certainly we did, but our position has been that when we're trying to expand the definition of an employer under the Pay Equity Act, we've done that to get access to male comparators, but outside of the public service, the government. For instance, I'm sure the committee is aware of the Haldimand-Norfolk case, where we did argue for the police to be considered as employees of the region. Our intent was never to argue that the government was the employer of the nurses that we represented and so that's why we haven't made any comments on that bill.

**Mrs Caplan:** Okay. So you really don't see that legislation as having any impact on nurses?

**Ms Bell:** Certainly not the ones whom we represent. We stuck strictly to the membership that we're accountable to.

**Mrs Caplan:** I'm glad you clarified that. There was some question as to what that case actually intended to do and what the role of the province was when it came to that one, so I thank you for that clarification.

Your brief is excellent. I was accused yesterday, as a member of the opposition, of asking embarrassing questions or questions designed to embarrass the government.

**Mr David Winninger (London South):** We didn't say that.

**Mrs Caplan:** I don't intend to be any nicer today.

**Mr Winninger:** Point of order, Mr Chair.

**Ms Dianne Poole (Eglinton):** She didn't say you were.

**Mr Winninger:** She said the opposition accused her; it was a presenter.

**Mrs Caplan:** You can see how sensitive they are.

**The Chair:** Order, please. Order.

Interjections.

**Mrs Caplan:** And justifiably so.

Your brief is excellent. It speaks volumes. My question would be: Do you think it would be a fair comment to say that from your perspective this legislation is not progressive, but in fact it is regressive?

**Ms Bell:** Absolutely.

**Mrs Caplan:** You do not believe it is in the interests of women or nurses in particular?

**Ms Bell:** Absolutely not.

**Ms Poole:** Thank you again for coming today. Certainly your comment at the beginning that you offer a unique perspective is very true. I've looked at a number of your comments, and I think they very successfully point out areas in which this legislation is in fact a step backwards.

I'd like to ask you about a few of your comments. First of all, on maintaining pay equity, you made the statement, "We find it insulting and detestable that the government is proposing that limitations might be prescribed for the current obligation to maintain pay equity."

When I was first reading that statement, I thought it perhaps referred to Bill 169, where the government is setting parameters for when it may be named as an employer, for instance, for purposes of pay equity. But then I realized that I think what you're referring to there is the fact that under the legislation passed in 1987 there were certain obligations that were to be met. For instance, by delaying implementation for three years in the broader public sector, this government is actually reneging on some of those obligations. Would you like to further elaborate on what you mean by "failing to maintain pay equity" and whether what I've gathered it to be is actually correct?

**Ms Mary Hodder:** I think the comment that you're referring to is specifically referring to the changes in the bill as we read it, specifically subsection 6(5), which I will read for you: "The requirement that an employer maintain pay equity for a female job class is subject to such limitations as may be prescribed in the regulations." What are they? That's a big area of concern. We perhaps read certain words with a reasonable degree of suspicion, and when those are passed under our eyes, they certainly hop out of the page, and it's on that basis that we are making the comment contained in that paragraph you referred to.

**Ms Bell:** If I can just add to that. Certainly our feeling is that it's the pay equity tribunal that has the authority to make the decisions on that, not by regulation. They're the ones who are supposed to be making those decisions.

**Ms Poole:** I think the point you make is quite valid. I am concerned any time that things are contained in regulation which might tamper with the spirit and the intent of legislation. Regulations were originally formulated in order to give the how-to manual: how to implement what the legislation said and provide backup information. But my concern when so many sections of this act are left open-ended because they're to be prescribed in regulation is that the government could actually impose limitations. They could change the spirit; they could change time lines; they could do many

things if they're not spelled out. One of the concerns we had with the original Bill 168, which is now carried forward with Bill 102, is that there are a number of areas where it is prescribed by regulation. So I'm glad you brought that particular one up.

I'd like to also ask you about your comments on proxy. You've been extremely critical of the government's approach to proxy comparison. In fact, I think one statement you make is particularly well taken. It says: "The proposed initiatives contravene the fundamental principle of comparing the compensation of female job classes to male job classes for pay equity purposes. Comparing female job classes to female job classes is unacceptable."

I think basically what you are saying in that sentence is that the original intent of pay equity legislation and the definition of "pay equity" was to redress systemic gender discrimination relating to female job classes and male job classes within the same establishment. What the government has done with the way it's come out with proxy is compare female jobs to female jobs, which really gets away from the original intent of pay equity. I just wondered if you'd like to comment on that or in fact any of the suggestions you've made for changing the proxy comparison method, as the government has proposed it.

1020

**Mr Walter:** I think you're quite right. Our concern is that the original intent of the act was to compare female jobs to male jobs, and we think proxy pay equity comparisons should be done in the same manner. Really, I think if you took the kernel and nugget of what they have in proxy and, instead of female to female, changed it to female to male, it may be workable.

The other part of the equation that we see has to be in there is you have to have, in a collective bargaining situation, the parties in that collective bargaining situation deciding what information is necessary for them to conduct pay equity comparisons. The way it is set up now, it looks like the potential proxy employer would be in a position to identify those female jobs that would be comparators to other female jobs. We just don't think it's an acceptable approach. A proxy employer may have no interest in assisting the parties. We think it should be the parties that are involved in that bargaining situation identifying the information and actually conducting the comparisons.

**Ms Poole:** You've made the statement on page 1, "We will not support government initiatives that roll back progress made towards the elimination of gender-based wage discrimination." I think you've already replied, in response to Ms Caplan's statement and question, that you feel there are many aspects of Bill 102 which are a step backwards.

If, for instance, amendments were proposed which would bring back the original time line for the public sector, and some of the other suggestions that you've made—if those amendments are rejected by the government, would it be your recommendation that we question whether to support Bill 102?

We're opposition members, so in the final analysis we have to decide whether we want to support it. On second reading, which is basically debate on the principle of the bill, the Liberal caucus did support pay equity extension in principle. We

have a lot of problems with what the government has done and in fact the manner in which it's gone about it, and we feel it really has betrayed both the principles and women in how it's done it. But on third reading, we actually have to decide whether we can support this bill in its current form, even though, in our opinion, there are many aspects of it which are a step backwards.

**Ms Bell:** Certainly, as far as our membership is concerned, we do not support the bill and we would urge you not to support it. It does not maintain the principles we feel the original bill did. It's retrogressive. It doesn't address the male-female gender bias and systemic discrimination that's gone on. We do not support this bill and we would urge you not to as well.

**Mr Ted Arnott (Wellington):** Thank you for coming in this morning to present your concerns to us. I want to compliment the Ontario Nurses' Association. I think you do an outstanding job on an ongoing basis of keeping members of the Legislature informed of your concerns in a very positive and constructive way.

Today you've been very harsh with the government. You've used very harsh language. You haven't used the word "betrayal," that has been unsaid. When I read in preparation for this committee, the Premier a year ago in the *Globe and Mail*, January 17, 1992, used the quote that you said he had indicated, promising pay equity. A year later, here we are and things have changed. Would you characterize what's happened as a betrayal to nurses?

**Ms Bell:** We're certainly not happy with it and I actually think it is fairly retrogressive. If you want to portray that as betrayal, then I'll leave you to say that. We're certainly not happy with what's happened. We're very concerned with the changes and do not support the government's change.

**Mr Arnott:** It appears to me to be a betrayal. I'll say it.

**Ms Bell:** That's fine.

**Mr Arnott:** "Systemic discrimination" is a term that is used in the context of pay equity and it's the reason for the need for pay equity. I've seen a number of definitions, but I'd like to ask you: What is your definition of "systemic discrimination"?

**Ms Hodder:** Gee, I guess we're going to go over our hour. There are various definitions for "systemic discrimination." Certainly, I believe that the broadest one is most appropriate. It applies in various areas for various things. In this context, I guess one would refine it to the discrimination that the system historically, currently, presently has, and, God knows, in the future will continue to have on the woman's earning power vis-à-vis the male earning power. That's a very refined definition for purposes of this.

**Mr Arnott:** On page 2 of your brief, the second paragraph said, "By moving in the direction of Bill 102, this government has blatantly reneged on its promise to right historic wrongs in women's wages." It seems to me that the pay equity concept and the pay equity initiatives by various governments in the past have been efforts, I guess, to right historical wrongs. Would you agree with that?

**Ms Hodder:** Where is it?

**Ms Bell:** Sorry; we have ours single-paged, and we copied yours double, so our pages are different and I apologize.



**Mr Arnott:** Page 2: "By moving in the direction of Bill 102"—it is the second paragraph on page 2.

**Mrs Caplan:** The pages are actually numbered.

**Ms Bell:** Okay. We've got a different copy.

**Mr Arnott:** "This government has blatantly reneged on its promise to right historic wrongs in women's wages."

**Mrs Caplan:** It's just above "Guiding Principles."

**Ms Bell:** Yes, we found it.

**Mr Arnott:** My question was, it seems to me that pay equity is a direct initiative by the government to right historical wrongs. You would agree with that?

**Ms Bell:** Absolutely. Our concern is that any progress made under the old legislation is being backpedalled by the new legislation, and in fact it's not addressing the concerns that the initial legislation was supposed to.

**Mr Arnott:** Okay. What do you think is the most important issue facing nurses today in Ontario? Would it be the preservation of existing jobs or would it be issues surrounding patient care or would it be pay equity? The most important issue. It's a tough question, I know.

**Ms Bell:** Certainly, as far as a day-to-day issue is concerned, preservation of jobs is a major concern for our membership, with the changes in health care. Having said that, one of the major problems our nurses face is how this relates to patient care, and our concerns about downsizing, certainly in the institutional sector, are the effect and the outcome on patient care. Balancing the budget is certainly important, but not at the jeopardy of patient care. So while our nurses are kind of caught in a dilemma of wanting to keep their jobs, they're also very concerned as professionals as to how those changes affect the patient.

**Mr Arnott:** The 1992 budget—we're still in that year; the fiscal year, I guess, ends in March—projected spending something at in excess of \$50 billion and projected a deficit of \$9.9 billion. This past week the government borrowed over \$3 billion, using a Wall Street broker, in excess. If you add up the borrowing they've engaged in in the past year, it's over \$9.9 billion. It's something like \$12 billion. Nurses, I assume, are very concerned about that as well, the long-term effects of that.

**Ms Caissey:** Most definitely. I think, not only as nurses but as taxpayers, we are all concerned about that. But we are also concerned about what it will do to us in the future as a group.

**Mr Walter:** If I might make a comment on that as well, I think you should keep in mind, though, that certainly our employers knew about pay equity at least—what?—in 1988. They were supposed to put aside a certain percentage of their payroll for nurses, and many employers in the hospital sector simply haven't done that.

**Mr Arnott:** Hospitals were also under the impression they were going to receive more in the way of transfer payments than they're getting this coming year.

**Mr Walter:** Certainly, in the years that I'm talking about, they were receiving those transfer payments and still were not keeping the money aside for pay equity.

1030

**Ms Bell:** One of the things we point out in our brief is that had this job-to-job comparison happened in 1990 when the hospitals were receiving the moneys, this would have been dealt with. We're concerned that by the lack of willing negotiating, and that not happening, we're now seeing a change in legislation which is going to dismiss any chance at gaining that, and the excuse of no transfer payments now doesn't address what happened in 1990.

**The Chair:** Thank you, Mr Arnott. It seems that another question has come up. Mrs Mathysen?

**Mrs Irene Mathysen (Middlesex):** Yes. Thank you for coming. I just have some sort of technical questions to get things clear in my mind. I come from the teaching profession, where there isn't this problem in equity; it's based on qualifications. I was wondering if you could help me. For the nurse practitioner, I understand the level of competence and the quality of training. I just wondered, what is the training period for someone who you mentioned would be currently in the wage range of \$52,000? I know where you are now, and I know we have a long way to go, but if you could explain what recent increases—it seems to me that you had an increase back in late 1990 or early 1991 or in that vicinity. Where were you previously in terms of pay scale?

**Ms Caissey:** The people who are currently earning \$52,000 would have a certificate of competence with the College of Nurses of Ontario and they would either be graduate of a three-year community college program or have a BScN.

**Mrs Mathysen:** A BSc would be four years, right?

**Ms Caissey:** Yes, correct.

**Mrs Mathysen:** Okay.

**Ms Caissey:** And prior to our last negotiated—

**Mrs Caplan:** And 10 years' experience.

**Ms Caissey:** And 10 years' experience. Thank you. Yes.

**Mrs Mathysen:** It's the same with teaching. You have your certificate and then your increments come with years of experience, 10 years being the framework.

**Ms Bell:** Absolutely, but can I point out that the teachers did that through collective bargaining, and they addressed that. That still doesn't address the inequity of the male-female bias in job payment. For our members, although they increased in our last collective agreement to the \$52,000, that was through collective bargaining. If you recall, there was a nursing shortage at the time. After wage freezes and other government initiatives, we're finally getting paid for the work we do. This didn't address the inequities in payment that pay equity addresses, so I don't think you can compare the two without realizing that one was gained through collective bargaining, not pay equity.

**Mrs Mathysen:** But you said pay freezes prior to, what was it, 1991?

**Ms Bell:** There were two years of anti-inflationary legislation we were under back in 1982 and 1985, I think, somewhere around there. I don't have the date, but there were two rounds of freezes where there were no increases.

You've got to realize that at a negotiating table you've got two parties. For the most part, the majority of our members fall under the hospital sector. Dealing with the OHA and convincing it and getting collective bargaining is a different forum, and while we did get a wage increase, a substantial one, for our long-term employees, we were abundantly clear at that point in time that it did not address pay equity, and that's still our stance.

**Mrs Mathysen:** In terms of the job, though, you were significantly behind at that point.

**Ms Bell:** Absolutely.

**Mrs Mathysen:** And there's still a long way to go. That's what I'm trying to understand, where you were and where we have to go from here.

**Ms Bell:** You're absolutely right, Ms Mathysen. If I can point out, at that point in time we only had from our beginning wage to our end wage a \$4,000 difference. So you started at \$32,000—sorry—you started at \$32,000 and ended at \$40,000, so it was \$8,000. The \$32,000 was frozen. The start wage for nurses was frozen, and we now go to \$52,000. What we tried to convince and were successful in convincing the OHA of was that this was a recognition of a career as opposed to just a job and that these people were there and providing a necessary service.

**Mrs Mathysen:** I must say the battles you fought in that regard aren't unlike the battles some of us fought. Anyway, I appreciate that; it helps.

**Ms Hodder:** Can I just make a bit of clarity for the members of the committee? There are two things I would like to bring out. Number one is this \$52,000 that's been floating about, this number, \$52,000: I don't want you to think nurses have been well paid for very long, because in actual fact that salary's only April 1992.

The second thing is that I listened to some of the questions and comments. I want you to know that the extension of the time from 1995 to 1998 is not an idea that has been contrived in our minds. In actual fact, we are in the process of trying to get a plan with an employer who is now already, even in the absence of the legislation being law, saying that he has until 1998 to do it. So these are very real matters.

**Mr Winninger:** I can certainly understand and appreciate the arguments you've made today. I am a little perplexed, though, that you do not show any support for the bill. To come back to Ms Poole's comment earlier, the minister candidly admitted yesterday that the effect of the legislation would be to partially delay payment equity laws, but at the end of the day, three years later in 1998, the tab would be the same. I'm just wondering whether by rejecting this bill you're not essentially freezing the status quo and thereby diminishing whatever access is available to pay equity for your organization and other women.

**Ms Caissey:** I think, with this bill, our lack of support isn't with the principle of pay equity; I think it's with the amendments that have changed what was set out in Bill 168. Certainly, in delaying the implementation you are asking women in this province to continue subsidizing the hospital system with poor wages well for us, as through our taxes, and

that isn't acceptable. We really feel the bill has to go ahead with the time lines that were previously set out.

**Mr Winninger:** I think I understand your point. I just wanted to ensure, in case Hansard didn't pick up my interjection earlier, that you don't go away misled, in that Mrs Caplan had said that the government objected to embarrassing questions asked by the opposition yesterday. It was a presenter who, when asked a question by Mrs Caplan, said her question was designed to embarrass the government. We're quite tolerant of questions.

**Mrs Caplan:** I'd ask you to check Hansard. That's not at all what occurred. In the comments I made I said I was accused yesterday of framing questions that were embarrassing to the government. That is accurate and it stands as stated. The fact that you're overly sensitive, Mr Winninger, is a reflection of what a terrible bill this is.

**The Chair:** Thank you, Mrs Caplan.

**Mr Winninger:** Mr Chair, I just wanted to ensure that the record was accurate, for the benefit of people who weren't here yesterday.

**Ms Poole:** What you stated is not accurate.

**The Chair:** Do you have a comment, Mr Walter?

**Mr Walter:** Yes. I might make a comment just to clarify the situation a little bit. In our submission to you, the argument we're making is that we only support pay equity as it exists in the current law, but if that pay equity can be extended to groups that can't fit the pay equity rules in the current law, like proportional value—we support proportional value and we support proxy. What we don't support is extending the deadline for the implementation.

We think that proxy and proportional should be retroactive to January 1, 1990, the same rules as in the current law, and that pay equity should be achieved by 1995. We certainly don't want you to go away thinking that we don't support those two principles, because we do. We support proxy and we support proportional, but we only support them when they're done under the rules in the current law, and that also means comparing female jobs to male jobs.

**Mr Winninger:** Thanks for the clarification.

**Mr Gary Malkowski (York East):** Thank you for your presentation. I appreciate your comments about the time line for pay equity. I understand your concerns there. I'm wondering if you agree that the proposed legislation is in fact an improvement on the pay equity legislation as compared to the legislation that was presented by the previous government in 1987.

**Ms Bell:** I think we've already stated that no, we think this is retrogressive. The extension of the payout times and some of the other things that we mention in our brief are not supportive of the previous intent of the legislation and we don't agree with that comment.

1040

**Mr Malkowski:** Can I just clarify then? You're saying that you do not agree that the proposed legislation is any improvement compared to the current pay equity legislation passed in 1987?



**Ms Bell:** I think Lawrence just said that we support the principles of proxy and proportional, but we do not support the changes that you've made that allow the current system to be extended to 1998 and the change to a female-female comparison as opposed to a male-female comparison.

**Mrs Caplan:** To help clarify the situation and why you see this as a step backward, ever since Gerry Phillips in March 1990 announced that proportional was going to be an amendment to the legislation, many employers have already begun using proportional and it has been negotiated in a number of plans. We heard that in the presentation from the ministry. So effectively today, in the existing law, proportional value is permissive. It's not mandated, but because of the signal in 1990 that it was going to be part of the law, it's already in practice.

By extending the time lines, while today you have a permissive approach to proportional being negotiated at the bargaining table within the existing time line, it is a step backward when you extend the time line, which then allows those plans to be delayed by three years. That is one example of a backward step. Would you say that's a fair categorization of why you see this as a backward step as well? I know the frustrations that nurses have had in trying to negotiate plans. We discussed that yesterday as well. But I'm asking if aside from that you are aware of plans that had been negotiated using proportional value.

**Ms Hodder:** I was going to say to you that in the several years that I've been out there slogging, even though there has been a suggestion to employers that they address their minds to proportional—in fact I thought it was one hell of an idea—I have not had any success with any employer in doing proportional, absent it “being the law.”

In addition to that, overall there are individual improvements with this bill in individual areas, but the overall impact of it as we see it, particularly with the dates and the other things we've mentioned, is retrogressive. I'd just like to clarify that.

**Mrs Caplan:** I'm interested in your experience. I know that you've generally had difficulty, as I said, in the negotiation of plans. I am aware there have been some plans that have been successfully negotiated, primarily where there have been large employers with complex job classification systems. The pay equity plans have incorporated proportional value successfully in other areas, as I say.

**Ms Hodder:** We have in excess of 180 no-male-comparator, all-female-establishment plans that have been just put on hold pending the amendments on proportional and proxy.

**Mrs Caplan:** And on those you feel that the net effect will be a delay by three years in the negotiations as a result.

**Ms Hodder:** Those plans have been signed since 1990 and 1991. If you're going to make it a subsequent date, then I think the evidence speaks for itself.

**Mrs Caplan:** I guess one of the concerns I have is that this bill as it has been presented could be perceived as being quite deceptive because of those kinds of parts of it, where if you look at one particular section it may look like it's an improvement, but when you look at the whole package, what I hear you saying is that it is a significant backward step and

that it will delay the ability of nurses and other women to achieve pay equity in Ontario.

**Mr Walter:** Yes. Certainly in our experience, what has been happening is that not only have employers been freezing male wages, but they've also been eliminating many of the male jobs that would have been comparators in 1990. By the time 1993 and 1994 roll around, there just won't be those male jobs any longer. Even if they are there, they're being paid about—I could give you dollars, but they're being paid substantially less than they should have been, except that employers have been rolling back their wages and freezing them, because they know at some point they'll probably end up being a comparator.

**Ms Bell:** If we can point out, the majority of the male comparators are non-union and are in a position where their jobs are pretty tenuous. They are unlikely to object to being either red-circled or rolled back. In fact they're defeating the purpose of pay equity in that regard. People are concerned about their jobs and are not likely to object, while everyone else in the institution gets a pay raise.

**Mrs Caplan:** We're going to be hearing later in the hearings from the Ontario Hospital Association and I'm just wondering what your statistics are. I've heard from them in other meetings as well. What is the number of nurses who have lost their jobs because of the policies of the NDP government?

Interjection.

**Mrs Caplan:** In transfer payment numbers.

**Ms Bell:** I think I'll phrase this more in the number of nurses who have lost their jobs for a variety of reasons. One may be the transfer payments, but certainly our other concern is how the funds the Ontario Hospital Association gets are managed. We've always said there's enough money in the system. It's how it's distributed, and we still firmly believe that. We may want to rethink it next year, but at this point in time, that's how we still stand.

Our last figures according to HTAP, the Hospital Training and Adjustment Panel, which deals only with hospital nurses, indicate that somewhere around 2,700 people have lost their jobs. Our membership in ONA has decreased in the last year by 2,800. So we have some concern about the figure, because it doesn't capture our part-time workforce, which is almost 50% of our membership. Although there's the comment that a lot of the jobs are going to the community, we have public health nurses and community health nurses who are being laid off as well in this downsizing and change to substitute care providers. We're very concerned about that.

**Mrs Caplan:** That question, by the way, in case Mr Winner missed it, was designed to embarrass the government.

Interjections.

**Mrs Caplan:** You should be embarrassed that 2,800 nurses have lost their jobs.

**The Chair:** Order, please.

**Ms Poole:** Just to change tack a little bit and get out of that particular one, I think the reason there may be some confusion on the part of government members as to whether this is a progressive step forward or a retrogressive step backward comes from the fact that nurses are in a different situation than,

say, child care workers. Child care workers were excluded from pay equity legislation in 1987 because they were all-female occupations, while nurses, through many battles I might say, have been able to secure some pay equity advancements.

For your particular profession, which has had access to pay equity even though you've had to fight pretty hard for it, when you look at this legislation and see that it's going to be delayed for three additional years, that to you is a fairly major step backward, while child care workers who might not be included at all in any pay equity legislation feel this is still a step forward even though they might want to make changes to it.

I don't know whether that is an accurate summation of why there's some confusion as to whether it is progressive or retrogressive or anything else. It would seem to me that has some bearing on it, that you feel you have some protection under the current legislation which would be negated by the delay of an additional three years.

**Ms Bell:** Certainly as it relates to job-to-job comparison in the hospital sector, although we've only got two signed-off plans where anybody has actually got any money, and that's been frozen because of the maintenance issue. That's another issue of concern we have.

I understand your comment as it goes to child care workers and how they will be affected by proportional and proxy. I can point out though, as Mary said, we have over 180 files that are on hold awaiting those two principles as well because they're all-female establishments.

I'm not sure that we have at the tips of our fingers how many members that actually translates into. I think we've already said we certainly support the principles, but we don't like the fact that they're being delayed. By the time it comes into effect, we don't know how many changes will have occurred in the workplace. In fact, will we ever see pay equity is our question. We see the possibility of that not happening as it's now currently going.

1050

**Ms Poole:** Certainly when proportional value was announced as an intention of the Liberal government in March 1990, for one thing we couldn't foresee what was going to happen in September 1990, but I can assure you it would not have taken three years to reach this stage and then to find, on top of that, that the government has delayed the time frames in the original legislation.

So I think what the government is purporting to be gains has actually been a betrayal in many ways. I won't ask you to comment on that, because it's a very partisan and political comment. That's our prerogative and I don't feel we should put you in the position of having to comment, but I do think that part of the reason for the confusion is that you have made gains which you now see being clawed back because of that three-year delay.

Is there time for one last, brief question? When you referred to several litigated decisions regarding the nursing profession—and you've obviously had to fight hard for a number of the gains that you've made—do you see an erosion of some of the powers of the Pay Equity Commission or the possibility, say through regulations, that might take away from the gains that you've made?

**Mr Walter:** Really, that's one of our arguments on the maintenance issue, that the tribunal was set up, as far as we understand, to ensure that the parties had a fair hearing on issues that they were unable to agree on and areas in the law that were open to interpretation, and we've pursued that route for a number of issues, maintenance being one and definition of the employer being another.

The government's planning on changing the definition of who can be a government employee for pay equity purposes—I won't comment on that since it doesn't really affect our members—but certainly on the maintenance issue we think the litigation is still ongoing. The two hospitals were unsuccessful at the tribunal on the issue and now they are judicially reviewing both of those decisions, and we don't have a decision yet on that. So we think that at least that process should reach its final conclusion before the government decides to regulate limitations on that principle. Certainly regulating limitations on a principle that is established, a right that's established in the law, is unacceptable to us as well.

**Ms Bell:** If I can just add to that too, I think one of our major frustrations is the fact that the amount of money spent on litigation could have addressed the pay equity issue, and that's very frustrating, not only for us but for everybody who believes in pay equity and the solution.

**Ms Poole:** Somebody had told me that it costs around \$100,000 to take a case to the tribunal.

**Ms Bell:** Our association has spent in excess of \$2.5 million arguing over the current legislation and its implementation.

**Ms Poole:** So it's been a very extensive and expensive process.

**Ms Bell:** I was interested in Ms Caplan's comments about people already negotiating proportional. I mean, we can't get job-to-job when, with the tribunal decision implemented, it would be very nice to have an employer who felt willing to go beyond the current legislation, and we don't see that.

**Ms Poole:** I think in your particular case there's been a real reticence to go any further than they have to, but we've heard from some private sector employers who in fact have already implemented proportional plans in anticipation. It was announced by the government three years ago that it was going to do it, so they thought, "Well, let's get it out of the way."

I think that's what the reference is to, but there's no doubt that any time you have new legislation it can be very expensive setting the precedents and defining the parameters. I think the Ontario Nurses' Association is to be commended. Not only did you put in the money, but you also put in a lot of perseverance and effort in trying to be the pacesetter for pay equity and ensure that the women in your profession got it. You are really to be quite commended for all you've done.

**Ms Bell:** Certainly our members are fully committed to the philosophy of pay equity and have supported that principle in putting moneys towards that. I think our membership should be commended for feeling that way about it, and I thank you for that comment.



**The Chair:** Ms Caissey, Ms Bell, Ms Hodder and Mr Walter, on behalf of the committee I'd like to thank you for taking the time out this morning and coming and giving us your presentation.

**Ms Bell:** Thank you.

**The Chair:** Thank you very much.

FEDERATION OF WOMEN TEACHERS'  
ASSOCIATIONS OF ONTARIO

**The Chair:** I'd like to call forward our next presenters from the Federation of Women Teachers' Associations of Ontario. Good morning. Just a reminder, you'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks slightly briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, please identify yourselves for the record and then proceed.

**Ms Lorraine Stewart:** Good morning. My name is Lorraine Stewart and I'm an executive assistant with the Federation of Women Teachers' Associations of Ontario. We represent the 42,000 women teachers who teach in the public school system in the elementary panel. With me today is Wendy Matthews and Jan Kainer. We have a fourth person, Mary Bruce, but she seems to have disappeared. I think she'll show up in a few minutes. I'll be doing most of the presentation, however.

I think you have our response before you. Before I start, I want to just make a few comments. In general, we're in support of this piece of legislation in that we, like many other groups, have been waiting quite a long time for the promised changes to the Pay Equity Act, because, as you are probably well aware, ever since the passing of the original act, something was promised to be done for the people who were still excluded.

What that thing would be was discussed at some length. Over time it seemed to jell around the the concepts of proportional, and then proxy, comparisons. The Liberals did some work on that. There were a lot of discussions. There's a lot of research done by the Pay Equity Commission itself in seeing how the act was starting to play out. We're now looking at the second piece of draft legislation from the NDP government.

We're in support in that we're in support of changes that will extend the coverage of the act. I say that because most of our brief will read kind of negatively. What we've tended to focus on are those things about this piece of legislation that we think need improving, those parts that we don't agree with. I've left unsaid the fact that, in general, we agree with the purpose of the legislation. I haven't listed every clause we agree with. I think you can read into it that if we don't say we disagree, we agree with it.

One of the concerns we've had since the very beginning is that no one has ever been able to come up with anything that would address the issue of those people in the private sector employed in establishments with fewer than 10 employees. It just never seemed practical that one of these methods would be applicable there, so what we are proposing—and I believe you've probably seen this before from other members of the Equal Pay Coalition—is a clause which would allow those people to lay complaints.

While the general legislation is a proactive piece of legislation, those people would be able to complain if they felt they were being discriminated against. It would allow them at least some access to the pay equity legislation on the basis of doing work of equal value to male employees. That's on page 3. We would have an addition to the act that said employers are prohibited from discriminating on the basis of gender in the compensation of employees.

As you know, the current legislation—not the pay equity legislation, but other legislation—only applies in the case of being paid equally for equal work—the same job, in other words—and we want to get into the whole concept of work of equal value.

One of our other problems with the proposed legislation is something that has been there ever since the tabling of Bill 168, which is the move to try to protect the crown from being defined as the employer of groups who are able to meet the Haldimand-Norfolk test or any other test the tribunal has been able to set up.

We come from the point of view that the Haldimand-Norfolk test is a fairly rigid test and it has required, for those groups that have been able to meet it, quite extensive litigation before the tribunal and quite extensive research. If people are able to go through all of that and prove that in fact behind their employer is the province as an employer and that that's in fact the employer that sets most of the criteria that set their wages, then they should in fact be able to access comparisons within that major group.

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What we would like to see is this whole section left unchanged and let those groups which are able to go through that route do so. It has actually proved not to be very widely used. Only a few groups have been able to meet those very rigid standards in the case of being compared to the province. Several groups like libraries have been able to prove it as far as municipalities being their ultimate employers.

Another concern we have is that there are several references, and I've listed them all together on page 4, to passing regulations or defining what maintenance means. We have a concern about this too, because once you get through all the months and sometimes years of work that it takes to get a pay equity plan in place, you very quickly learn that you can lose it all the very next year through various connivances to do with maintenance and you do hit this very quickly.

What we would like to see is this section of the original act left unchanged, so that people can prove that maintenance issues are at play there, that they will be able to use the act the way it is and be able to take their case to a review officer or the tribunal and make a case. We don't want to see rules and regulations about maintenance that can then be further manipulated.

Some of the examples that we've hit are of course that once you've found a comparator, that job will disappear or that job suddenly doesn't seem to get the same wage increases that other groups around it get or they change the job description for the comparator, so suddenly now it doesn't suit you as your comparator any more. There are all kinds of ways that maintenance can be manipulated to the detriment of pay equity plans.

Our major problems with Bill 102, though, deal around the deadlines issues. We've said it right here, that we're extremely concerned with the fact that somehow, in a bill that was supposed to be dealing with extending rights to people, all of a sudden rights that we already had are being removed. One of them was the bit about the crown being the employer, but a very serious one is this sudden extension of three years to the time it takes to implement pay equity plans.

We're in the position, and a lot of people are in the position, of having signed plans, plans that have been costed, plans that have been negotiated, and part of those negotiations dealt with the deadline of 1995. Now all of a sudden, that one component is being changed. From our point of view, it's being changed to the benefit of the employers, without regard to the fact that it was only one component.

When we were negotiating those plans, that component was probably, most likely, weighed off against other components in the negotiations. So there's a basic unfairness of allowing that component to be changed and leaving everything else the same. What about the tradeoffs that were made? What about everything else that was worked around that?

I'm saying that in context of the fact that I think our experience has been that most of our plans weren't actually going to 1995, so as a group we don't have any particular vested interest in the deadline being extended, but we can see it being basically unfair to those groups that did negotiate to that deadline, especially since they are now three years into the whole business and they should be well advanced in getting those wages adjusted. I really can't see any reason to change that. Employers have adjusted to the fact that they've got two more years to complete their plans. They've probably already made most of the big payouts.

The problem that we have with the particular method of proportional that's being proposed here—actually the proportional bit has been worked on more than anything else; it is closer to being perfected in our eyes than most other sections—deals with the deadlines. When Bill 168 was tabled, it had an implementation date of 1992 for public sector employers and employers with 100 or more employees. Now that deadline has been changed to 1993. We would like to see it changed back to the 1992 that was promised.

Those big employers and those big unions that have been following the Pay Equity Act were well aware that 1992 was the date that was being talked about, and discussions have been going on based on that date. People have made plans in terms of what they think they might have to pay out with that date in mind. I don't think that the original date of 1992 is dealing a hardship on anybody, but changing it to 1993 is creating a hardship; it's creating a hardship for the people who have been counting on those adjustments and now suddenly have had a whole year snatched away from them.

Another problem that we have with the whole proportional one, and I think this is just a technical problem, is that the changes which were made there deal with doing proportional or doing proportional on top of plans that have already had job-to-job in them or there's an allowance that you can agree to do proportional for the whole thing, to make some kind of internal logic in your plan. What it hasn't quite allowed for is an employer that could do job-to-job and simply hasn't done it yet, and there are those people out there. All of

us who are dealing with pay equity know we're still negotiating. We've got a lot done, but there's a lot left to do.

What we're proposing here is a clause that would say very clearly that you must first try job-to-job and you must do job-to-job where it can be done and then you do proportional, even in the cases of those people who haven't completed their plans. We would not like to see ourselves having to give away two years, or in this case three years, of job-to-job adjustments in order to get the proportional.

In the sections dealing with proportional value comparisons, a new term appeared. It appeared when Bill 168 was tabled, and that was the "representative group of male jobs." It's been a definition that we've had trouble with from the beginning because we're not clear what it means and we suspect that we don't like it. In fact we know we don't like it because it's clearly plural, so it purports to say that you can't do comparisons with one male job.

We can also see litigation starting to develop around the term "representative." What on earth is that going to mean? We're going to have differences of opinions about it. We don't see any reason to presuppose that it's impossible to do proportional value comparison in an establishment that only has one male job class. It might not be suitable; it might be that this one job class just won't fit and that one side or another doesn't believe it will work. They'll go to the review services, they might go to the tribunal, and they might determine it would not, but I don't think the legislation should presuppose that this is unworkable.

I've talked to some groups, not among ourselves, that have negotiated pay equity plans, and they say—the current legislation is permissive on this subject—that they have done proportional value with one male job, so they know ways that it can work. It's been done already, so I don't think this legislation should assume that it can't be done.

That brings us to the proxy method. There's a lot of different terminologies here. Like many other groups, we're not fond of the word "proxy" because of the fact that it's not a generally used term and it's got some baggage attached to it. Whenever I go to explain it to people who are not up to date on the pay equity legislation, their eyes glaze over and the whole concept is very foreign to them. We would like to try to use terminology that more closely resembles the terminology already in the act, with which people are already familiar, like comparator. So what we're proposing rather than saying "proxy" is "comparator" organization; it's the organization with which you are comparing, just as you previously compared job classes.

Our major problem here is with the whole idea that you have an all-female workplace and you weren't able to do job-to-job and you weren't able to do proportional. Now you're out looking for a comparator organization. What the legislation is asking you to do is to take your key—we would suggest that using the word "benchmark" would be a better term—female job class and now you're going to try to compare it first with a female job class, but you're going to have to try to find a female job class in that other organization with which to compare, and then only when you've compared to it will you ever get to the male job class.



1110

My experience has been that the more links in a chain you have to go through, the more inaccuracies build into the system. We find this whenever we're trying to work out adjustment schedules. Every step creates its own inaccuracy. It has a cumulative effect of building, particularly when rounding gets in. If you can do something in one step, that's better than doing it in two, and if you can do it in two, that's better than doing it in three or four, because every additional step builds a new inaccuracy that you have to somehow adjust for. We frankly can't see any reason why you have to go through a female job class in order to get to a male job class.

The kinds of groups that are going to be listed in the schedule, the kinds of establishments with which you can do comparisons, are going to be obviously—this is what all the talk's about—in the same general sector. We're going to be comparing public sector to public sector. What we suggest is fairly simple—and we haven't worked it all out in clauses; it's the same one you may have seen from the Equal Pay Coalition—that once an organization has determined that it cannot use job-to-job or proportional for all its job classes, then it identifies a suitable comparator organization, then just asks for the list of job titles and identifies from the list of job titles some jobs—it may be all, because it may be a small place where there aren't a lot of job titles—and asks for the information on those jobs.

The other major problem we have with the whole proxy methodology is that almost all the work, all the key decisions, are being made by this proxy organization. They're being asked to pick the female job class. They're being asked to do the comparison and then feed the information back to the organization seeking to do the comparison. Every one of those decisions is a real decision. There's no one right answer. It's certainly never been our experience that there's one right answer. It usually involves, in pay equity, a lot of discussion and a lot of decisions being made.

All those decisions—to go left, to go right, to pick A, to pick B, to round up, to round down—are going to be done by this outside organization, the one that has no vested interest in the pay equity plan. There's a sort of fundamental problem with that, in that by the time the information gets to the seeking organization, the organization trying to make the comparison, it's already been filtered two and three times in this series of decisions that has been made, over which they've had no control.

Certainly this has been our experience in negotiating, and in our case we've only ever negotiated employee to employer, so there was already a lot of familiarity built into that situation. But our experience has been that you've got to get your data, your information, as raw as it can possibly be, as unstructured as it can possibly be. Then you can work with it. We've had the experience where employers have handed us lists—"Here are the male job classes, here are the female job classes, here are the job rates"—all listed out for us.

We said: "No, we want to know the number of males, the number of females. We want to decide whether that title is really two jobs or whether these three titles are really one job. We need more information. We want to see annual rates, we want to see vacation, we want to see benefits. We want to be part of the decision of what the job rate is. We don't want you

to hand us a piece of paper that says, 'This is the job rate,' because all those decisions are very important to the outcome of a pay equity plan."

You have to get your data as pure, as raw as it can be, as much information, and then you can work your way down to making a plan. That is our real problem. If you've got this information already filtered, a lot of key decisions already made, I think the organization seeking to make the comparison is already seriously handicapped in what it can do in terms of working out a pay equity plan based on information over which it has very little control.

The other thing is that I can see this creating an awful lot of work for organizations that have been chosen to be the comparator or proxy organizations, a lot of work for which they're not being particularly compensated. Again, I don't want to get on the compensation thing too much, because you can always decide to pay them to do it, but paying people to do things isn't the key at all; it's having a vested interest in the outcome that's the key, having a real interest in it. That's what they don't really have, because they're not a party. As much as possible, parties should be the ones making the key decisions.

After this section, which starts on page 9, if you can't bring yourself around to the concept of changing how proxy is proposed to be done in the legislation—that is what we're asking for—we've gone on to say, if you're not going to go that far, then at least alter what you've got there. We've got a series of smaller amendments, if you can work with this, working through the female job class, and at least improve on that. On the next few pages we've put this in, but that's not what we really want.

We'd like you to change it so it's female to male and the information is given in a raw form to the seeking organization so it can know how to make it fit into its gender-neutral comparison system, not already filtered through somebody else's. All the decisions about what GNCS to use and what factors to weight, those are all key decisions in what the outcome of the pay equity plan will be. I think as much as possible they should be in the control of the parties that have to live with the outcome, not in the control of some other party that doesn't have to live with the outcome.

The compensation adjustments: Again, I would like to see the compensation under proxy moved back to an earlier time than what is proposed in this legislation, which is 1994. It would be nice if it was 1990, but that may not be realistic. I would like it at least back to the date that was discussed earlier, which was 1993, so we would have job-to-job, then proportional and then proxy at the very least.

The time lines, the beginning and end times, have been stretched out too far. I would like to see a completion date in there as well. In the current legislation there is no completion date for the proxy comparisons. We would propose a beginning date of 1993 and a completion date of 1998, five years, the same length of time as we have for job-to-job under the current legislation.

Dealing with some of the more technical aspects of the act, there is a whole section dealing with settlements that are reached between the parties after a case has already started through the review services and tribunal route. In general, we agree with the idea that those settlements are usually the

preferred way of doing it. We don't want anything that forces people to litigate. There's enough litigation going on anyway about this act.

Anything that can encourage parties to settle between themselves should be encouraged, but with one proviso—we've got it on page 11: that is, that any settlement binds the parties to it. However, no employer, employee or group of employees or the bargaining agent can waive any rights or disregard any obligations under the act. That doesn't mean they can't have a settlement that's different than the review order. As I said to you before, there are many possible outcomes to pay equity negotiations, because they're very, very complex, particularly when there are a lot of job classes.

While there is no one right outcome, it is possible to determine what a wrong outcome is, and we want that concept to be built in. It is possible to make a case that a particular piece of an outcome doesn't meet the criteria of the act, but within that, you allow the employers and the employees to come up with the right outcome that suits them. The stipulation they must keep in mind is that they cannot waive rights or disregard obligations.

In the proposed legislation, there is a subsection to 32.1 that allows parties or groups to become parties to tribunal hearings. We're very concerned about that, because the history has been that there are groups out there—they have mainly been groups that have a commercial interest in particular job comparison systems, but there have been other groups like that—who have only a peripheral interest in the particular plan that's being debated but have perceived that they have some financial or other interest in some of the issues that are being discussed in this context. We're very concerned that those people should not now be encouraged once again to interfere in tribunal cases. They have pretty well been discouraged, because several of them have tried to make cases and in general they've been found not to have a vested interest in the outcome and have not been named to be parties. But certainly our history has been that we've had to deal with these groups, and we don't want anything in the act that encourages any of that. The only party we could see adding to the employer and the employees would be the pay equity office itself where it has requested a hearing before the tribunal, because there will be cases, particularly in the non-unionized sector, where the pay equity office might choose to take a review order it had already issued before the tribunal on behalf of non-unionized people who were perhaps unable to represent themselves in this context. But I don't want to encourage any of those other groups to once again start tangling us up in litigation over their commercial interest in particular systems.

1120

At the back of our proposal, I have made a nice little list here with columns beside it saying "add, delete, amend" and put it all into language. It's kind of a summary of all the things I've said to you so you can kind of read through it.

In conclusion, it's a positive piece of legislation. It's a piece of legislation we've been waiting for for quite a long time, since 1987, basically, though I'll admit in the first year or so we were all very busy trying to apply the first piece of legislation now. But for some we've been very concerned about those people who could not fit into the original piece of

legislation and what we could do to extend its benefits to them. In that sense, anything that starts extending the benefits of the Pay Equity Act is positive.

At the same time, I'd like to see it done right. We'd like to see some of these changes that are proposed made to the legislation so that it can better do what it purports to do. There. I finished in time.

**The Chair:** Thank you. Each caucus has about 10 minutes for questions and comments.

**Mrs Caplan:** I want to compliment you on an excellent brief. The recommendations you've made for clarity of language we've heard before and we will be looking very seriously at proposing some amendments that would have that effect.

We've had a number of different views about the effect of the delay, both in plans as they are being negotiated, that the actual negotiations will be delayed, as well as the effect of the payout. There's also been the concern raised that employers were changing the jobs that would be likely comparators. We just heard that from the Ontario Nurses' Association. I don't know if you were here for their presentation or not, but I wondered if you had any comments or experience with that.

I know the teachers have been very successful in negotiating and implementing pay equity plans under the existing legislation, and your brief, I think, is from the experience of your sector. What we've heard from other sectors is that they've had a different experience in the ability to negotiate the plans, and they feel that the change in the time line actually affects the fundamental principles and will be a step backward in the achievement of pay equity.

**Ms Stewart:** Just to put it in the context of where we are, we have actually negotiated almost all our pay equity plans with job-to-job comparisons and an implementation date of January 1, 1990. We have now only two major boards with which we have not completed those negotiations, but even in those two boards we're talking job-to-job in 1990, so it's not going to affect us personally in that context.

There are some of our very remote boards where proportional might come into play. We're talking very small, like two or three teachers and an OPP station somewhere in the extreme northern part of Ontario. They have a past history of keying their regular negotiations to some nearby place, like Sudbury or Thunder Bay or whatever. Since that is their past history in regular negotiations, we've been trying to do it for the pay equity as well. The major problem in those places is that you have an unstable workforce and that it comes and goes. People go up there for a year or two years, so the next time you call, the same person doesn't answer the phone. It's the continuity of those little places. I'm trying to get that. It's not any lack of interest. There's no ill will up there.

**Ms Murdock:** Sudbury is a little place?

**Ms Stewart:** No, I'm not talking about Sudbury. I'm talking about the next one out from Sudbury. Sudbury has been done for a long time.

**Ms Murdock:** I know.

**Mr Winninger:** Espanola.

**Ms Stewart:** No, Espanola's been done. Espanola was one of our first ones. We're getting smaller and smaller than



that. There are really small places where there are only two or three families that live there, and they're maybe 200 miles from Sudbury but they're a separate school board—those sorts of places.

**Ms Murdock:** Chapleau.

**Ms Stewart:** Chapleau and Hearst are done. We're smaller and smaller than that. We're talking about very remote, fly-in kinds of places. We're working on those now. It's a possibility that we might have to use proportional, but we don't really think seriously we will. We've been in discussion for a long time with those groups, and as I say, if we could just get the same person twice in a row, we'd probably get it straightened out. We'll get to them eventually.

However, from our experience, we can certainly empathize with those people who see this as a serious issue. We can see that the issue of that completion date of 1995 being extended tugs at the whole fabric of a negotiated plan by taking one element and pulling it out, particularly since everybody in those negotiated plans, the employers and employees, have already adjusted to the concept that it began in 1990 and will be finished by 1995. Now, all of a sudden, the rules are changing and the extension—are they going to even this all over the whole eight years and take money back from people, or is it only the last two years that you're not going to spread over three more years?

Usually what you did is you figured the whole cost and you distributed it evenly over the five years or you looked at the cost in relation to the 1% of payroll, and you might have given a higher percentage in the early years and then gradually—I've done those, where you'd start to wind down smaller and smaller until you were able to complete it. But the sudden stretching came out of left field. It wasn't even being talked about before and suddenly people are looking at that completion date being three years tacked on.

Certainly, the changing of proportional: I think a lot of us in the sector had kind of gotten our minds around to proportional beginning in 1992. It wasn't as good as beginning in 1990, which we were talking about back in 1990 and 1989, but it was certainly better than what is now being proposed, which is 1993.

I think there's a whole negative message there in all of this to those people who are resisting pay equity. There are still large forces out there that drag their feet, give you very slow data, give you data that's different than what you asked for. You wait five weeks to get it and suddenly it doesn't have the right—then you have to go back and so on. Anything that delays and delays and rewards them for delaying, encourages them to continue in that type of activity.

I don't want to blacken school boards, because the fact is that most school boards have been very cooperative and we've had good luck with them. But where we've had problems, those are the kinds of tactics you face. I don't think the legislation should encourage people to say: "Look, we delayed, delayed and delayed. Now it's going to be 1993." Those people who settled are suckers, right? The people who went out and settled with their employees for proportional starting in 1990—and there were people who did that—those employers now feel or may feel, depending on their attitude, that gee, if

they had only delayed they wouldn't have had to pay at all for three years; they'd have saved three years' adjustments.

This piece of legislation, because it's proactive and because it's built on causative self-management, should do everything it can to encourage—I'm sorry; I'm talking like a teacher, of course—the kinds of behaviour that will reach the outcomes you want to have. So you put in rewards for the positive behaviour; you don't reward the negative behaviour.

**Mr Arnott:** Thank you for your presentation. It's very clear and concise and we appreciate the information you've provided to us.

I have a couple of specific questions. The first one is with respect to your recommendation on page 3, that women in workplaces with fewer than 10 employees should be extended some protection under pay equity, that they should be given the right to complain, I guess, to the Pay Equity Commission. Is that correct?

**Ms Stewart:** Yes.

1130

**Mr Arnott:** Would you then support a provision which would require employers of under 10 people in the workplace to prepare pay equity plans as well, and then in turn be forced to devote a certain percentage of their payroll on an annual basis to pay equity implementation?

**Ms Stewart:** Well, we started out with that kind of view, but now that's not really terribly practical if you've only got under 10 employees. What we were trying to do here was to take our pure position, which would be to post plans and do everything and adjust it to the realities. The very negotiating and implementing and posting has a cost in terms of time and effort attached to it, quite aside from the cost of the adjustments, and I don't think it's really practical to put all that on people who have less than 10 employees.

That's why we're suggesting this as being what we see as the pragmatic, practical alternative, but it still fills the gap between the equal pay for equal work legislation and the equal pay for work of equal value legislation, because those under-10s fall in a gap in between and they're not covered by either one now.

**Mr Arnott:** So you're saying the employee would have the right to complain to the commission, but there would be no provision for remedial action to be taken.

**Ms Stewart:** Oh, there would be provision for remedial action, but what I'm saying is that they wouldn't have to have a posted plan. They would just prove—they would go with their—

**Mr Arnott:** So the commission would then take the next step and order the company to alter its pay scale.

**Ms Stewart:** In order to accommodate, if that was true. I presume they would have to use review officers. They currently would.

**Mr Arnott:** Yes, that's quite a bit different from the existing pay equity legislation, because the theory behind that is that the government doesn't directly interfere, and we heard that yesterday from the deputy minister, or intervene in the relationship between employers and employees, but simply approves the plans of employers and employees that they have presented

for pay equity, subject to certain criteria, naturally. But it simply approves the plans.

**Ms Stewart:** In practical terms, 99% of the time it's self-management and it's worked out between the parties. But in the cases where it doesn't, and that occurs under the current legislation, you go to the review services. The review officers have become very experienced in pay factors and so on, and in fact they come out and they attempt to mediate. Again, my assumption, from looking at what the data are, is that in most cases they mediate. They come out and they sort it out. I would assume that's what would happen in most of these cases. They would come and sort it out and it would only be those that didn't get sorted out that would have to move any further along the continuum.

**Mr Arnott:** On page 4 of your presentation you talk about the crown as an employer, and you feel that the crown should be, for all intents and purposes, considered as the employer, I assume, in the broader public sector, generally speaking. Is that what you're saying?

**Ms Stewart:** No. I'm saying that people, groups, should have the right to make that case. It's not true for everyone.

**Mr Arnott:** If the provincial government is the funder of that particular organization, is that—

**Ms Stewart:** If you meet the criteria; there are four criteria in the Haldimand-Norfolk case, and not all transfer agencies that receive a lot of their funding from the provincial government would meet the Haldimand-Norfolk criteria.

**Mrs Caplan:** I think it's also the Kingston-Frontenac—

**Ms Stewart:** The CAS workers in Kingston-Frontenac. A lot of the CAS workers are—you'd have to ask someone from CUPE to give that one. I think they provide all the funding, 100%, so there's no other source of funding. They also provide extremely rigid regulations about what work they will do and so on.

There are transfer agencies that have practically no local discretion. They carry it out but they are carrying it out for—for instance, I wouldn't consider a school board in that context, because school boards, for one thing, are unique in that they have a taxing ability of their own. They have a great deal of discretion as to how to carry out broad, general directives, and that's true of many transfer agencies as well. But there are some that can make their case that they don't, so the employees experience a certain frustration in trying to deal with their immediate employer because that immediate employer has no discretion. They have no movement because they're so hemmed in by the true employer that is behind them.

The case has been made for the municipalities in the case of many libraries, the library boards and so on. That was a case of proving the municipality was the employer. The CAS workers have been very—well, not successful in terms of they haven't actually gotten any money out of it yet, but they've been successful in terms of getting a review order and a tribunal decision in their favour, showing that they do meet that test.

**Mr Arnott:** It's exceedingly complex, isn't it?

**Ms Stewart:** Yes.

**Mr Arnott:** It's difficult to draw the line because of the way we've organized ourselves over the years, with local

agencies or local municipalities attempting to generate some of their own funding through their own tax opportunities and deriving a lot of their revenue from the provincial government. It's very difficult to draw the line.

**Ms Stewart:** Many, many more groups have failed to meet the Haldimand-Norfolk test than have actually met it. Lots of groups attempted to use it. Haldimand-Norfolk itself didn't deal with the profits as the employer, but they dealt with them in terms of municipalities or other employers that are behind their immediate employers. I think the current legislation allows a route for getting at the true source of the income for those people who can prove their case, and we don't think that should be slammed in the face of people.

**The Chair:** Mr Arnott, if you don't mind, Mrs Caplan has a question along the same line.

**Mrs Caplan:** It's supplementary to that as it relates to Bill 169 and the definition of "employer." We haven't had a lot of discussion about this, but I would like your comments. It seems to me that it's important for the government to be able to define who is a crown employee, and not just for the purposes of pay equity. In fact, I've stated on numerous occasions that I think Bill 169 has very little to do with pay equity and that this could have been resolved within the pay equity legislation, Bill 102, with a definition of "employer."

It really has a whole lot more to do overall with collective bargaining. I have a very cynical view of the deal they cut with OPSEU, because it has always been OPSEU's position that for its purposes, it should be able to negotiate with the government rather than with the independent agencies.

I wanted your comments on this. The reason I believe the government should be able to do it is that today in Ontario we have a public service of about 90,000 civil servants. If you were to add all of those who met that test of 100% payment—

Interjection.

**Mrs Caplan:** Well, I think it does clarify the point.

**Mr David Tilson (Dufferin-Peel):** On a point of order, Mr Chairman: This is a long question—

**Mrs Caplan:** Yes, it is.

**Mr Tilson:** —and as long as this doesn't take our time, I have no problem.

**Mrs Caplan:** I won't take their time.

**The Chair:** It won't be taken from your time, Mr Tilson.

**Mr Tilson:** Okay.

**Mrs Caplan:** You're talking about, if you look at the Ministry of Health, almost every community mental health program, all of the addiction programs, anything that is funded 100% through the Ministry of Community and Social Services—every child care program, virtually, in the province. You could triple the size of the civil service if you use the test on the basis of funding and standards because both Comsoc and Health set the standards for those programs and they fund them 100%. Surely it's not feasible for us to consider tripling the size of Ontario's public service, and the government must be able to do that. What concerns me is that this is a very deceptive way of doing it.

Have you considered the implications for society of tripling or quadrupling the size of the Ontario public service? One of your recommendations is that the government should not



change that definition. Have you thought of the implications to you as a taxpayer of what it would mean if you had province-wide wage rates and you had 200,000 or 300,000 civil servants?

**Ms Stewart:** We're not actually advocating province-wide wage rates or any of that. That's not what we're trying to get at. We're trying to get at people, in the context of pay equity plans, being able to make this case. In fact, very few—well, one, Frontenac CAS workers—have been able to make the case that the province is their ultimate employer. So while the act has been in since 1987 without this restriction, it has not played out to the scenario you just laid out.

**Mrs Caplan:** In fact, the Frontenac case, under this legislation, would not have been permitted. We heard that yesterday. That's just the case for pay equity. It's my view—and I'm pleased to hear your response—that Bill 169 is really about, ultimately, the size of the civil service and has very little to do with pay equity alone for the purposes of definition of who's the employer. I believe it would lead to province-wide wage rates for several hundred thousand people, which would, I think, not be in the public interest, so it's interesting to—

**Ms Stewart:** It's certainly not in our interests. I'm talking about FWTAO.

**Mrs Caplan:** That's right, yes.

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**Ms Stewart:** We bargain with local school boards in fact.

**Mrs Caplan:** And it works well.

**Ms Stewart:** It works well and we believe strongly that the parties who have to live with the results should be the ones who make those kind of decisions.

**The Chair:** Mr Arnott.

**Mr Arnott:** I defer to Mr Tilson.

**Mr Tilson:** Just a couple of questions specifically on the settlement issue so that I understand your rationale. I think that's on page 11 of your submission. This proposal has been made by another delegation to the committee. If the bill was amended to match that proposal, just so I understand your rationale, what sort of settlements would you expect?

**Ms Stewart:** There are already changes proposed to 25 in Bill 102, so what we're proposing is another—

**Mr Tilson:** I understand that. I'm saying that if you have settlements over the whole issue of pay equity and that amendment would be there, what sort of settlements would parties talk about?

**Ms Stewart:** In practical terms, we do get settlements. Much of what is in the proposed 102, in section 25, is really already happening, but it doesn't have the sanction of the act. In practical terms, you have a breakdown, you have a review officer come in; you have another breakdown, the review officer writes an order. Sometimes you attempt to work with the order; sometimes one or both parties object to it. You end up at a pre-hearing at the tribunal. You go through all this litigation. Then they attempt, once more, to mediate. They attempt once more to get the parties to come and that's usually where you settle.

**Mr Tilson:** I understand all that. My question is, what would you be settling? If there's something that's going to be a waiver of a provision in legislation or a waiver of something to do with the law, what sort of things would you be settling?

**Ms Stewart:** Usually you'd be settling the plan, or you might actually be just settling a particular issue that was preventing you from completing the plan.

**Mr Tilson:** For example.

**Ms Stewart:** An isolated issue; for example, our very first case, which was the Wentworth-Perth case, dealt with two very preliminary issues, but they were holding up every plan in the province. It was the issue of who the bargaining agent was and how to divide the teachers into job classes.

You just could not proceed without those two issues because the employer had a different view about who the bargaining agent for the employee was, so we had to deal with those issues. That whole case was only on those issues, and so you could have settled those two issues, which wouldn't be the whole plan, believe me.

**Mr Tilson:** Can you tell me the rationale for the amendment? The reason I ask is that there could be something—for example, if the act were to be implemented at a particular point for a particular company, it might result in substantial job losses or job losses and it may well be that there may be a longer period of time required to implement the act. This amendment says, "No, you can't waive anything in the act." That's what your amendment says.

**Ms Stewart:** No.

**Mr Tilson:** I guess I'm raising the question—it might be a hypothetical question, we don't know—that there may be situations in which women may be interested in saving jobs as opposed to demanding that particular provisions in the act be honoured.

**Ms Stewart:** What we're getting at here—and that will reach part of what you are saying about costing and so on—is that pay equity plans tend to be far more complex than people realize in that what you usually have are a large number of female job classes. They don't all have the exact same interests in the outcome. The plan might work—now a particular gender-neutral comparison system, GNCS, or a particular decision on a particular issue might impact differentially among those classes. In other words, it might benefit some of them more than others. You have to choose A or B. A will benefit this bunch and B will benefit that bunch, but you can only do A or B and you have to apply to all of us.

**Mr Tilson:** Then you don't settle.

**Ms Stewart:** No, you do, all the time. Making that decision is not waiving a right under the act because you do have to make decisions, but what you would not be able to waive is the right of all those classes to make their comparison. What we're trying to do is to protect, say, particular job classes that might feel that they got sold out entirely. They would then have a right to make their case. It may be—I don't think in most cases it would be—that they were part of a whole mix. You had to measure it one way or the other.

**Mr Tilson:** I guess the fear I have, and the trouble when you make fixed decisions like that, is that there may be situations in which it might be wise to delay the implementation

of a particular plan simply for the issue of saving jobs. That's one of the questions.

If I can find the article that I referred to in a delegation yesterday, I'm going to read from it. It's an article that came in the *Toronto Star* in December:

"Is it wise to enforce a pay equity timetable that would end up hurting some of the most vulnerable working people in the province? What should our government's first priority be: increasing the salaries of people who are lucky enough to have jobs or creating new jobs for those who are unemployed?"

That really doesn't get into the issue of settlement, but it could be that in enforcing a principle of pay equity for particular companies at a particular time, there may be a downswing in that company's progress, not just the recession but in that particular company's development, and that it might not be a wise time to progress with that fast a timetable of pay equity. However, if there was a settlement that stretched out that timetable, the act would be violated.

The company says: "We're proceeding on this timetable. We're going to have to cut back." My fear is that if you get too restrictive and don't allow the parties to negotiate a particular position, there might be job losses. That's why I was asking whether or not it is wise to have the rigidity of that proposed amendment.

**Ms Stewart:** Our position would be that what's in our proposal right here is what is in fact currently true. Under the current act, you can't make a settlement that's in violation or waives rights. We're only proposing this change because Bill 102 proposes a few other things that we hope they don't mislead people into thinking. So it's to be clarified.

**Mr Tilson:** We're looking at section 25.

**Ms Stewart:** That's right.

**Mr Tilson:** If the previous bill is wrong—and I don't know whether you're saying that or not.

**Ms Stewart:** No, I'm saying it is my view that this is currently true of the current legislation, and it only needs to be added because of the other additions. We want to make sure that it's clear in the group of additions that this is still true.

**Mr Tilson:** I think you see my point and I do fear that point, that you can be too rigid in a position and thereby result in jobs being lost of the very people you're trying to save. That's a fear that I would have of taking that position.

**Ms Akande:** I'm going to go back to page 6, if I may, of your report. Thank you. It's nice to see some of you again. I really wanted to look at proportional with only one or possibly one job class. It may be my lack of understanding—it obviously is—but I don't know how you'd do that. Do you have a sense of how you'd do that?

**Ms Stewart:** Yes, I do. There are a couple of ways. There's a way of doing regression analysis that will bring out the dollars-for-points method. So it can be done. I'm saying it cannot always be done in the case of one.

We certainly heard from people at CUPE that they have done it with one and it is doable. It's not always doable because sometimes your one male job class is very skewed in terms of not fitting in. When you do a regression analysis, you find a director way out here, because it's usually the one executive director or whatever, and so they might not fit in. In

fact, they have done it many times with one, and they believe it is doable.

What we're proposing is to put the "es" in brackets so that it could be more than one or one, and leave it up to people to work out how to do it. It's going to depend on the system that you use.

**Mrs Caplan:** Just to be helpful, that's a technical thing that their consultants who work in the field do all the time. I would advise you, Ms Akande, not to try and understand it; it's impossible. They're experts at it.

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**Ms Stewart:** They do graphs and they figure out your upper flow. There's a whole science to do with regression now.

**Mrs Caplan:** It is. It's like actuarial science. It's wild.

**Ms Stewart:** Jan here has been doing some work on it for me.

**Ms Akande:** I have to apologize for not knowing.

**Ms Stewart:** Offhand, I can't do it, but Jan has done some work on it.

**Mrs Caplan:** That's right. Computers help.

**Ms Stewart:** If you get enough raw data, you can work with it.

**The Chair:** Thank you, Ms Akande. Mr Lessard. Oh, more?

**Ms Akande:** I had a supplementary to that. Do they have any stats, any information about the accuracy or the efficiency of using regression analysis, or has it been used so seldom that in fact we don't have information about that?

**Ms Stewart:** I think we have to really emphasize that, as with anything to do with pay equity, if the parties don't break down and don't end up in very rigid positions, which is usually what happens when they go to the tribunal—you've got to remember that's a very small fraction of all the parties. Hundreds and hundreds of parties, thousands of parties out in the province negotiate plans.

Usually the parties negotiate, which means it's give and take. You work it out, you massage it until you can get it to work. With goodwill, and usually in most cases there is goodwill, it can be done. If that breaks down, they have to sit down, pull out statistics and work out and show that they've proved their case based on some of those others. But with a little goodwill on both sides, you can work it out. You make sense out of it because you know your workplace.

**Mr Wayne Lessard (Windsor-Walkerville):** I want to thank you for an excellent presentation as well. I always appreciate briefs that include some specific recommendations for changes to the legislation. I was interested in your suggestions about the crown as the employer. You mentioned the Haldimand-Norfolk case and the fact that very few people have been successful in their applications, but certainly many have tried, and as long as that case is out there, I suppose that many more would be encouraged to take that option. I would think that these provisions provide some clarification for people so that they don't have to expend the time and the energy and the cost to pursue that option. Don't you think that could be a benefit as well?



**Ms Stewart:** The sort of self-serving nature of these is that you're only closing the door for the crown. You've left all the other employers, like the municipalities. The vast majority of Haldimand-Norfolk-based cases have been used to find that a municipality is the ultimate employer. The CAS is the only one that's tried for the crown. Haldimand-Norfolk is still being applied in terms of finding the municipality to be the employer of its transfer agencies. Transfer agencies go down and down. The crown isn't the only group out there that has some employers below it. I mean, it all gets into the contracting-out issue.

But no, the only group we know of today—we have to remember that the current legislation has been around since 1987. The vast majority of job-to-job plans have been done. If people are making that case under the job-to-job, they're making the case. We know that the people representing the CAS workers are making their case based on the Frontenac decision. There are very few left out there under the job-to-job rules who are still able to make that case.

**Ms Murdock:** Thank you for coming. I was a former member of FWTAO, when I taught in one-room schools in the middle of the bush in those little wee places, but the Ministry of Education was of course the employer, so I didn't have to go through that whole process.

I just wanted to ask you a question I've ended up asking most of the presenters in terms of language, which you mention on page 7. It follows almost identically the Pay Equity Coalition's presentation yesterday in terms of the use of "proxy organization," "a comparator," "key female job class" and so on.

I'm wondering how important you consider that in terms of changing, for instance, language from "seeking organization" to—a suggestion yesterday—"an establishment requiring cross-establishment comparisons," and whether that wouldn't even be more confusing to a public that generally finds it confusing as it is.

**Ms Stewart:** Again, being a teacher, I think language is important, but more important than the language are the more substantive changes that we have. This is why I put them in one paragraph there and then everywhere else I've use double references. I've put our preferred language and the language that's actually in 102 in brackets so that you can know which one I'm talking about. I wouldn't want to get the language and not get the substantive changes. It would be nice to get both. Please don't give me the—

**Ms Murdock:** It's like, I'd like pay equity 10 years ago; forget an extension of three years.

Also on page 11, going back to what Mr Tilson was talking about, it was actually just a clarification that I was looking for. In your addition that you're recommending, wouldn't I be correct in assuming, based on decisions from the Pay Equity Commission already, from the reporting mechanisms and so on, that they would not accept any waiver of any rights or obligations already existing under the act? I mean, you can't waive requirements that are required.

**Ms Stewart:** The way that pay equity negotiations actually occur is the pay equity office does not look at every plan that's signed in the province to see whether it meets the criteria of the act. If the parties agree and they sign the plan, they don't send a copy of it to the commission; nobody previews

it. Nothing happens unless somebody affected lays a complaint that the plan does not meet the requirements of the act, which is what I'm saying here.

Once a plan has been signed between the two parties, the bargaining agent and the employer, it applies. It's now in effect, it's deemed approved and it goes ahead, provided nobody complains. The only way you can complain about a signed plan is that you can complain that it's not being carried out according to its terms or you can complain that it doesn't meet the requirements of the act. People can get a hearing on one of those two issues on a signed plan.

What we're trying to do here is to make sure it's clear, that if that's true of plans that were signed without ever involving a review officer or anybody else, it should also be true of settlements that are made in the course of going through the process, because people, even at the point of meeting with a review officer or being at the pre-hearing or even being at the tribunal, make settlements. But those settlements, just as any settlement they made prior to them, should still be required to meet the requirements of the act.

**Ms Murdock:** Yes, but you can't waive obligations that the act requires you to do.

**Ms Stewart:** You currently cannot.

**Ms Murdock:** And in a settlement process the officer would be very familiar with the requirements under the act and therefore, in all likelihood, I would hope, would not be negotiating or mediating with the groups to waive requirements of the act. But I do see that in settlements that have been signed off and until a complaint arrives, the Pay Equity Commission would have no idea that they had, say, worked out something where they were waiving a requirement. Then that would cause a problem.

**Ms Stewart:** The settlements envisioned in section 25 are settlements that occur after there's been a review order and while you're in the tribunal route. You're in that process—

**Ms Murdock:** Hopefully never having to get to the tribunal.

**Ms Stewart:** Yes. You've had some pre-hearings. You might have had some preliminary hearing dates or whatever; you've reached a settlement. You're not doing that with the review officer there, because you've now got beyond the review officer. You make a settlement.

Our concern is that those settlements should have the same requirement as any other settlement at any other stage of the process. The proposed legislation says that these are binding on the parties. They reach a settlement, they sign it, it's binding, just as some that were reached before would have been binding on the parties. That's fine, as long as it's also clear that the other part is still true, that those settlements should be capable of being complained of if they don't meet the same requirement that our plan without the review officer would have.

**The Chair:** Thank you, Ms Murdock. Ms Stewart, Ms Matthews, Ms Bruce, Ms Kainer, on behalf of this committee I'd like to thank you for taking the time out this morning to give us your presentation. Thank you very much.

This committee stands recessed until 1:30 this afternoon.

The committee recessed at 1159.

## AFTERNOON SITTING

The committee resumed at 1341.

## ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

**The Chair:** I'd like to call this meeting back to order. I'd like to call forward our first presenters this afternoon, from the Ontario Public School Boards' Association. Good afternoon. Just as a reminder, you'll be allowed up to an hour for your presentation. The committee would appreciate it if you would keep your remarks somewhat shorter to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Ms Gail Nyberg:** My name is Gail Nyberg and I'm the treasurer of the Ontario Public School Boards' Association. With me are Janet Beer, director of labour relations; Carolyn Kay-Aggio, our legal counsel on this issue; and Mike Benson, executive director of OPSBA.

The Ontario Public School Boards' Association is pleased to have the opportunity to appear before the standing committee on administration of justice and participate in the government's discussion on Bill 102, an Act to amend the Pay Equity Act.

The association represents over 90 public school boards from across the province representing 1.4 million children. The association's goal is to promote public education and ensure that locally elected school boards are responsive to both education program need and resource capabilities of their local communities.

Public boards of education, for the most part, accommodated pay equity provisions as a result of the Pay Equity Act, 1987. Some member boards will be required to look at proportional value or proxy comparison methods to complete pay equity for all employee groups.

The issues we would like to address at this committee today are two specific areas: first, the proposed addition of section 14.1 and section 14.2 dealing with changed circumstances, and second, the requirements of boards of education that are designated as proxy organizations.

I'd like to turn the technical part of our presentation over to Janet Beer and Carolyn Kay-Aggio.

**Ms Carolyn Kay-Aggio:** Certainly, OPSBA has been involved intimately in making presentations and submissions to the government with respect to Bill 102. What we would like to emphasize today, however, is our position with respect to the "changed circumstances" amendments of Bill 102 and certainly the proxy comparison method of part III.2.

Dealing firstly with the changed circumstances, it is our position, quite succinctly, that the amendments with respect to the changed circumstances are of sufficient concern to OPSBA to warrant further submissions. It is our position that the existing language of the Pay Equity Act suffices and provides an adequate and appropriate mechanism for dealing with changed circumstances in an establishment.

Subsection 7(1) of the existing act imposes an ongoing obligation on employers to maintain pay equity even after a pay equity plan has been posted and deemed to be in compliance with the Pay Equity Act. Furthermore, subsection 22(2)

of the existing legislation allows any employee, group of employees or bargaining agent, if any, to complain to the Pay Equity Commission if, "because of changed circumstances in the establishment, the plan is not appropriate"—and I emphasize the words—"for the female job class to which the employee or group of employees belongs."

The test, therefore, under the existing legislation is given some focus—ie, it focuses on the female job classes and envisions that it is members of the female job classes that the plan is no longer appropriate for who will be complaining. The test in the existing act has been removed from the amendments, proposed sections 14.1 and 14.2, and this causes us concern.

With section 7 and section 22 of the existing act, it's our submission that there is already sufficient mechanism to deal with changed circumstances. There is no compelling reason, we feel, to unnecessarily complicate the process by adding yet another administrative or procedural burden on employers. This, in our submission, is exactly what the proposed amendments do. It's unnecessary and undesirable, in our perspective.

The amendments, as proposed, impose a requirement on establishments where there is a bargaining agent to enter into negotiations with respect to amending a pay equity plan when either party is of the view that the plan is no longer appropriate because of changed circumstances. The test in the amendments now is no longer appropriate with respect to female job classes, but rather that focus has been eliminated.

In our submission, the amendments thereby broaden the test as to what constitutes changed circumstances. Conceivably, the amendments now allow for male job classes, through the obligation to negotiate which the amendments impose, to potentially challenge comparisons that were used to originally benefit female job classes to which they had been compared. The requirement to negotiate, then, offers the prospect of an endless cycle of negotiation initiated by either party's belief, reasonable or otherwise, that the plan is no longer appropriate.

Changed circumstances, as I am sure you will all recognize, are something that can occur at any point in the life of an establishment or an employer. Consequently, there is always the possibility that even once the parties have renegotiated a plan in 1995, for example, with respect to changed circumstances, if something further happens in 1998, there is then the requirement for a further round of negotiations, and it can go on endlessly. This is also of obvious concern to OPSBA and to employers generally in the hope that there is some finality to pay equity in terms of the negotiation obligations.

The amendments to the "changed circumstances" language also fail to adequately explain or clarify the relationship between those amendments and the existing subsection 22(2). We feel this is something that certainly needs clarification.

The existing provisions, therefore, in conclusion, with respect to changed circumstances, impose sufficient obligations on an employer to keep him—and I use the word—"honest." Employers in the normal course of operating would be well advised—and I would certainly submit that this would be the



normal practice—to keep their employees and their bargaining agents, if any, apprised or informed as to changed circumstances within the establishment to ensure that there was continued compliance and acceptance by the employees or the bargaining agent with respect to that plan.

If such acceptance is not forthcoming, the complaint mechanism that currently exists in section 22 is available for the party who is not in agreement with the plan, as amended, to complain. In the result, it's OPSBA's recommendation that sections 14.1 and 14.2, the proposed amended sections, be removed.

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Turning, then, to the proxy comparison method, the second issue we feel compelled to address before you today is part III.2. Our concerns in that part of Bill 102 flow from the fact that school boards, individually and collectively, will undoubtedly be targeted by seeking employers—for example, child care institutions—as potential proxy employers. Bill 102 imposes onerous obligations, we submit, on potential proxy employers without at the same time providing protection for those same employers from the potential for abuse by seeking employers. Under the proposed amendments, the seeking employer has the unilateral right to decide whom to target as a potential proxy employer.

The amendments currently indicate the intent of the legislators to prepare regulations to guide in the selection of a proxy employer, and I ask you to bear in mind the distinction in the legislation itself between a potential proxy employer and a proxy employer. Both of those terms are treated differently and both are defined separately. Consequently, the indication in the legislation of the intent to draft regulations to aid in the selection of a proxy employer does not apply, or at least on its current reading does not appear to apply, to potential proxy employers.

The mandatory obligation to produce the wealth of information set out in section 21.17(1) of the proposed amendments is an obligation imposed on potential proxy employers. Again, I reiterate, these will have been simply targeted by a seeking employer. There is no mechanism currently in the legislation or in the proposals for a potential proxy employer so targeted to challenge the fact that their entity has been targeted and identified as a potential proxy employer. In the absence of criteria to aid in that initial targeting, the potential exists for seeking employers to simply cast their net as broadly as possible in the hopes that in the potential proxy employers that they've targeted there will be one within which the comparisons will result in the most favourable result to their female job classes that they are seeking comparators for.

As I said, once targeted, the obligation to produce information is mandatory. In the result that there's the potential for a number of potential proxy employers to be gathering and compiling and producing information to the seeking employer, obviously this leads to duplication, triplication, quadruplication, if you will, of efforts being expended by all of the potential employers that have been initially targeted. Ultimately, once that information has been produced to the seeking employer, it may be that a number of those potential proxy employers will not be ultimately selected as the proxy employer for purposes of doing the final comparison.

There is obvious time, effort and moneys being expended by the potential proxy employer in gathering this information. The activity is of no benefit whatsoever to the potential proxy employer, in our concern; it's of no benefit to the school boards, either individually or collectively. Given the current financial concerns of school boards as a whole, the prospect of engaging in this activity for someone else's benefit is certainly a serious concern to OPSBA.

With respect to the information that the amendments currently obligate a potential proxy employer to disclose or to produce, there seems to be an assumption in the legislation that this material or information is readily accessible and that it's simply a matter of handing it over. That, however, is far from the case. In a number of school boards—and certainly, I would venture, in a number of employer establishments—duties and responsibility data may not have been gathered, with the result that additional time, moneys and effort will have to be expended by the potential proxy employer to initially gather this information for purposes of then producing it to the seeking employer.

One question that remains unanswered in the legislation, and it's certainly not confined to section 21.17, in a number of places throughout part III.2 there is reference to comparisons or data being required with respect to jobs that have similar duties and responsibilities. What the legislation leaves unanswered, unfortunately, is the entity that is to decide whether or not the duties and responsibilities are similar. As a targeted potential proxy employer, do you have the opportunity to say to the seeking employer, for example, "I don't think these particular jobs have similar duties and responsibilities"? That issue requires clarification, in our submission.

As a result of the onerous obligations to produce data which may or may not exist at the time the request is initially made by the seeking employer, the 60-day time line in the amendments is simply not sufficient, in our submission.

A further concern is the provisions with respect to the gender-neutral comparison system. The amendments compel comparisons to be made to the proxy employer using a gender-neutral comparison system. What the act does not do is to clarify whose gender-neutral comparison system is being referred to.

A proxy employer who has already completed its own pay equity plan inevitably will have gathered its own job data having reference to the gender-neutral comparison system that entity is using; therefore, the job data gathered in a lot of respects will mirror what its gender-neutral comparison system required. The seeking employer using another or a different gender-neutral comparison system may require other job data the potential proxy employer simply had not gathered because of the fact that its gender-neutral comparison system didn't require them in the first place.

Again, OPSBA is concerned that, as school boards are the likely targets of seeking employers, there will have to be additional efforts expended by school boards in gathering this job data information solely for the benefit of a seeking employer which, as I say, may ultimately come not to use that information.

In the result, with respect to the proxy comparison method, OPSBA recommends that there be development of criteria to aid in the initial selection of a potential proxy employer. We would certainly recommend that that be done

in the body of the legislation as opposed to being done via regulation, which is the intent, at least at this stage, of the Legislature.

We would further recommend that the time line for compliance with the production requirements of subsection 21.17(1) be extended. We would also ask for clarification with respect to those issues that we have highlighted for you today.

At this juncture, what I would like to do is to turn to Ms Janet Beer.

**Ms A. Janet Beer:** We're prepared to answer any questions the committee has on these issues. We have been involved in the consultation process with the development of the two plans, and except for those issues we've raised today, we think it looks good.

**Mr Arnott:** Thank you for your presentation. You've provided advice for this committee that I think will prove to be very valuable over time. I think you've highlighted a number of important issues.

On the changed-circumstances provision, you've underlined very clearly how this new initiative is going to be extremely bureaucratic and administrative-heavy, and I think that's an important consideration for the committee to give some time to.

In your second main concern, the proxy method of comparison, you've suggested that, in some instances, employees who are seeking increases under pay equity will attempt, as you say, to cast as broad a net as possible in an effort to in some way benefit themselves in terms of pay equity increases. I totally agree with that. I'm wondering if you think—and I'm not 100% sure of this. Will it require a legislative amendment to seek that clarification, to develop the criteria to guide the initial selection of a potential proxy employer, or would that be set out in regulations such that it would be satisfactory to you people?

**Ms A. Janet Beer:** Obviously, our preference would be that it be indicated in the legislation as opposed to regulation. The second issue that deals with our recommendation is not only that we more clearly define those issues that Carolyn has raised, but also that there be a mechanism to challenge, if indeed the proxy organization in their view is not appropriate, so it would be more appropriately placed in the legislation.

1400

**Mr Arnott:** I have in front of me a memo sent to the chairpersons of all school boards by the Minister of Education, dated December 16, 1991. It states that the government set aside \$125 million for pay equity for 1991 for the broader public sector. After that, it was reduced to \$75 million, and your school boards were to get \$17.5 million. This was December of last year. Have you received that money?

**Ms A. Janet Beer:** My understanding, and I could confirm it for you with our director who deals with finance, is that a portion of that money was rolled into the general legislative grants and passed on to school boards. That money, however, was to accommodate ongoing implementation of pay equity. The majority of our plans are implemented over a three-year period. With the teacher groups, specifically in the elementary panel, we implemented to 1% of payroll for each group. So that money in essence came from the government

but was attached already to plans that were negotiated. I don't have the exact figure, however, on what amount we actually got.

**Mr Arnott:** Have you any figure to give us in terms of the school boards' portion of the cost of pay equity adjustments you've had to make over the last, say, year, or even five years? Have you done calculations with respect to that?

**Ms A. Janet Beer:** We have implemented, each school board, all of our pay equity based on the existing legislation of 1% of payroll. To the best of my knowledge, the last of the plans we are dealing with, with the exception of one or two groups at this point, are implemented prior to January 1994. So that would be 1% for that period of time from 1 January 1990. Because of some of the complex issues, many of our plans were not actually implemented until 1991, and there was a requirement, obviously, for retro pay back to 1 January 1990. A large portion of the 1% for the first year of implementation actually flowed into the second and third years in terms of school board budgets.

**Mr Arnott:** It's very difficult to quantify what it's costing.

**Ms A. Janet Beer:** It's very difficult. We've attempted to get a handle on exactly what the cost of pay equity has been. Many of our school boards, while doing pay equity, also implemented internal equity, which goes hand in hand in terms of the establishment of pay equity, so the cost may be higher than the 1%.

**Mr Arnott:** Are most school boards having to go to an outside consultant to develop their plans, or are they able to do it in-house?

**Ms A. Janet Beer:** I would have to say there was a combination of methods in terms of implementing pay equity. Some used consultants, some used plans that were previously developed and some negotiated their own plans between themselves and their unions.

**Ms Murdock:** Should I make the assumption that these are your two concerns, but the rest of the bill you're okay with?

**Ms A. Janet Beer:** As I said, we have been involved in consultations with the Ministry of Labour and have looked at it. We have very few boards that are going to be impacted by proportional value and proxy comparison, because the male comparators exist internally. The majority of the legislation, we believe, will work well, but you'll have to hear from other employers. We obviously haven't done a lot of study, simply because the implications aren't there for us.

**Ms Murdock:** I want to get to changed circumstance. In relation to that, subsection 7(1), as I read it, unless I'm completely off track, is, "Despite subsection (6), pay equity plans in the public sector shall provide for adjustments in compensation such that the plan will be fully implemented not later than the first day of January, 1998." And (7.1) reads, "Subsections (7.2) and (7.3) apply with respect to an employer in the public sector who has set out in a pay equity plan that was posted or in another agreement that was made before this subsection comes into force a schedule of compensation adjustments for achieving pay equity." Yes?



**Ms Kay-Aggio:** You're obviously looking at the RSO 1990s.

**Ms Murdock:** No. I'm looking at Bill 102. I'm presuming that you're referring to section 7.1.

**Ms Kay-Aggio:** No, we're referring to the existing section 7 of the Pay Equity Act. If it would be of assistance to you—

**Ms Murdock:** It would be. Please.

**Ms Kay-Aggio:** The reason I thought you were referring to the RSOs is that there may have been a numbering change; I am still looking at the 1980 RSOs. In any event, the provision is, "Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer." It's the obligation to maintain that float, that we assert is already in there, from which the ongoing obligation runs.

**Ms Murdock:** We're getting into a whole interpretation of language thing. Obviously lawyers do tend to do that. But in regard to that, I was listening to your argument as you were expounding on it. Having read 7(1) now—and 22; I'll have to read that, because obviously it's not this 22 either. I wondered; I thought, "This doesn't follow." But isn't it in the long run far better—and this is partly the rationale of our way of thinking, I guess—not to have to go through the Pay Equity Commission if you can do it between yourselves?

**Ms Kay-Aggio:** Certainly it's always desirable for the parties themselves to resolve any issues with respect to pay equity. That avenue, however, is always available. What we're concerned about, however, is the legislative requirement now for either party to initiate the requirement to negotiate, which the proposed amendments obviously obligate. With that there, there is not a lot of incentive in a lot of cases for a bargaining agent, for example, to negotiate a resolution. If at the end of the day their objective is in fact to involve the commission—

**Ms Murdock:** A resolution for pay equity itself, keeping that separate and apart from standard negotiation procedures.

**Ms Kay-Aggio:** Certainly.

**Ms Murdock:** Okay. To me the word "maintain" can be interpreted in a way to mean "to keep it at" and not necessarily mean that it also consider changed circumstances.

**Ms Kay-Aggio:** The obligation to maintain, we would submit, does in fact encompass the obligation to take into account any changed circumstances. If something happens in your organization and there's a reorganization such that the jobs are now out of line, then obviously your obligation to maintain is going to obligate the employer to look at that and to make sure that pay equity is still being maintained, notwithstanding what has happened in the organization.

**Ms Murdock:** Actually, it helps with the thinking here. Just to carry that a step further—not to say that public school boards or any school boards would do this—there are instances where jobs have been eliminated, at least on paper eliminated, or changed in such a way that they no longer exist; the person is still there but the job is no longer there. You know what I'm saying? In terms of maintenance, where the employer makes the decision that it's maintained, and taking into consideration changed circumstances, with the re-

quirement under section 14 in Bill 102, it would then give a different dimension to the possibility, at least in a unionized setting, where there would be a bargaining agent to argue that that job still exists even though it has been restructured, if you get my drift. You know what I'm saying? I realize that every presenter that comes before us is very specific to its own personal needs and its own experiences, but in reality, this bill has to, as you know, apply to the entire province and doesn't cover just the public school sector.

1410

**Ms Kay-Aggio:** Unquestionably. Just along those lines, however, it's our position that in that situation where the union is concerned and is not in agreement with what the employer has done, whether it's an obligation to maintain, the current provision, section 22, in our submission, provides an adequate remedy for a union to challenge or to assert that the changed circumstances have rendered the pay equity plan inappropriate. We don't consider that subsections 14(1) or 14(2) add anything more to that, but rather simply complicate the process and make it more administratively burdensome. That's our objection with respect to the amendments.

**Ms Murdock:** This sounds strange, but I'm personnel chair of my caucus and I negotiate contracts with my union and this morning at 8 o'clock I had a labour-management meeting because we have them ongoing; I presume that you, as your school boards, would do the same. Would not much of this already be done? Within your own experience, would it not be ongoing?

**Ms A. Janet Beer:** I'm sorry, I don't understand the question. What would be ongoing? Negotiations for—

**Ms Murdock:** Yes. Would you not already discuss many of these kinds of situations where jobs would be changed or the changing circumstances would be discussed, that you may never really go through section 14 on a formal basis?

**Ms A. Janet Beer:** There are two very different issues. One set of negotiations is accommodated by the Labour Relations Act, which obviously would encompass things like jobs, in terms of compensation, and there are already provisions under the act that talk about where you have a male and female comparator, when compensation kicks in, if they are in two different bargaining units. All of that will happen under the Labour Relations Act.

But in our view, the changed circumstances provision applies to renegotiating a pay equity plan. Those are two very separate things. In fact, in many of our cases pay equity was actually negotiated away from what we call the negotiated table under the Labour Relations Act.

**Ms Murdock:** Yes. I would expect that.

**Ms A. Janet Beer:** So there are two very different processes.

**Ms Murdock:** Yes. In truth, I would expect that pay equity would be discussed at a different table.

**Ms A. Janet Beer:** In true normal consultation with any union about organization these issues would certainly come up, but where a dispute arises under changed circumstances, and I assume in the scenarios that you're looking at it would be a dispute, whether the employer did or did not and whether

the union contends they did or did not, then the remedy is there under the act to apply to the commission.

We do not believe that it's necessary to renegotiate pay equity because one party is of the view that a changed circumstance has occurred. Most of this will be taken care of. However, there is remedy under the act now so that if a dispute arises the commission can look into changed circumstances and can indeed require that adjustments be made to the plan. So it is really a second level that in our view is not warranted, not necessary.

**Ms Murdock:** In regard to the selection of potential proxy employers, I know that later on in your submission you had orally stated that much of the information in your plans you would already have on file, where you say here, "It assumes the ready existence of such data." But I do like the idea of the clarification needed in terms of, if you don't have that data readily available you should have the right to say you don't have that, and the point was made by a group this morning of the onerous obligation of the proxy employer. So that point has been made and I'll certainly be discussing it.

My question basically is, would you not already have much of the information on file in terms of the seeking employer, indicating in their application not the job description but the function and duties? Would you not already have that?

**Ms A. Janet Beer:** We have the information. Our concern is that it's not necessarily readily available. If we are going to be a proxy organization—

**Ms Murdock:** We'll make that assumption that you are.

**Ms A. Janet Beer:** If we are going to be a proxy organization that's subject to the time-line provision in terms of complying with when the information is available, we believe that we should do the work and we can do the work. It's not necessarily readily available, but the employer can put that together.

We have a much larger concern that you are a potential proxy organization, and for each request, if you will, the data are different. In many of our boards, where we employ hundreds of different, for instance, administrative and support positions, you're pulling out specific jobs; you're attaching them to a gender-neutral comparison system which might not necessarily be the same as the seeking organization's. There's a lot of work involved, and there is no guarantee, in our view, under this legislation that you indeed will ultimately become the proxy organization. We have grave concerns about the amount of resources that we're going to be putting in and then it may not even be used and it may not even be appropriate.

If we are going to be a proxy organization to assist in the implementation of pay equity, we have no difficulty. We do have difficulty expending all of those resources when there's no guarantee that it will be used ultimately and it's not readily available because of the different compositions of organizations. We're going to be pulling out specific jobs with descriptions, specific plans, and each request will be different. In some communities, a school board, for instance, may be targeted by several seeking organizations. Each request is going to be significantly different in terms of what you provide.

**Ms Murdock:** So clarification is required in terms of specifics as to requests?

**Ms A. Janet Beer:** Absolutely; not only specifics as to requests, but maybe a mechanism to more clearly define who is a proxy organization before the work is done.

**Ms Murdock:** Okay, and the time lines, the 60 days, I presume, not being long enough, what would be long enough?

**Ms A. Janet Beer:** We obviously believe 60 days is not long enough. I can throw a figure out to you of 120 days, but I think in each individual case, if there is a concern, there should certainly be something that says an employer can indicate that "We simply can't meet that request," because whatever crisis is on their plate of the day and perhaps apply for an extension, if you will; perhaps 120 days and an extension if warranted.

**Ms Murdock:** So if there were clarification on some of your other points, would the 60 days be enough?

**Ms A. Janet Beer:** I would still like to see a mechanism to say that it may be an extension where warranted, simply because a lot of our smaller organizations have employees who not only handle personnel; they handle finance, they handle budget. If these requests come in March when we're doing budgets, there are other things that have to take precedence; if they come in over the summer, obviously we can comply. It depends.

**Ms Murdock:** I used to teach.

**Ms A. Janet Beer:** So you understand. It depends, but there are times of the year when we will simply not be able to meet that, given our other commitments.

**Ms Kay-Aggio:** Another concern we have with respect to the time lines is that, assuming our desire to see some language in there whereby potential proxy employers can challenge their identification as such, obviously the 60-day time limit or 100-day time limit currently flows from the date the request is made. There has to be some recognition, however, that if a potential proxy employer challenges the identification of themselves as such, somehow the time lines can't continue to run while that issue is being considered. We hope to see an appeal route to the tribunal with respect to the commission's decision on the employer's challenge, in which case most employers are not going to be pulling all of this information until that issue is resolved. So there has to be a meshing of the language to take into account that eventuality, which we certainly would like to see in the legislation.

**Ms Murdock:** Okay, thank you. I'm sorry, I probably used all the time. Did anybody else have any questions?

**The Chair:** Thank you, Ms Murdock. Any further questions?

**Ms Poole:** I just had a question for clarification, actually, that I was hoping perhaps the parliamentary assistant could make for us. When you are looking at the selection of the proxy employer, there obviously isn't any limit to the number of potential proxy employers that they go and request the information of. Could they go to two dozen?

**Ms Murdock:** You have to get a certificate from the Pay Equity Commission, which must be attached to the proxy group. I don't think there's a number specifically, but I'll defer to Jane because she's been intimately involved with this.



1420

**The Chair:** Please identify yourself for the record.

**Ms Jane Allan:** Jane Allan, Ministry of Labour. There's actually a schedule, a regulation that was tabled yesterday, and that sets out the types of seeking organizations and what type of proxy organization they can go to. There are certain rules around how they go to those proxy organizations. You can only go to that type of proxy organization in your geographic district. So right away there's a limitation on what proxy organizations you can choose, the type of organization and the geographic area you can look in.

**Ms Poole:** Let me just understand what the procedure is. At what stage does the Pay Equity Commission give out the certificate? Is it after initial inquiries by the seeking employer, where he has actually gone out and approached some of the proxy organizations and said, "Can you give us this data so we can determine if you're the best fit?" At what stage does the certificate take place?

**Ms Allan:** It happens at the very beginning of the process. A public sector employer first of all has to show to the pay equity office that it cannot achieve pay equity for all its female job classes using either job-to-job and/or proportional value. If it can show that, then the pay equity office will approve that it is indeed a seeking organization and then it can proceed to approach the potential proxy organizations. It will have to provide a copy of that certificate saying it is a seeking organization in order to get the information from the potential proxy organizations.

**Ms Poole:** So the certificate only certifies it as a seeking organization. It doesn't really say that it's a seeking organization that can only go to these other proxy employers. Actually, they could then go to 20 employers with this certificate.

**Ms Allan:** It depends. It will then have to follow the rules set out in the regulations and in the schedule in those regulations. Those regulations will say, for instance, if you're X type of seeking organization, say a child care centre, in the schedule that was tabled yesterday, it would send you to a municipality with a child care centre as part of it. So you only have the choice of going to that type of proxy organization. There may be two, there may be six, in your particular geographic district, so that will be your range of choice. It depends where you are and what type of proxy organization you have been sent to in that schedule.

**Ms Poole:** How specific will that be? What I'm trying to get at is, if for instance it was a child care organization, would 10 different child care organizations be able to go to the school board and say, "We want you to determine this information for us"?

**Ms Allan:** That's right. In this case, the child care centre would go to a municipality with a child care centre. There may be a number of child care centres in that geographic district that go there. Mind you, they're all going to come with more or less similar job classes. We think that will decrease a lot of the work for the proxy organizations, because they'll be looking for job matches for a child care worker or a cook or maybe one or two other job classes, but it won't be a significant number. A lot of the work will duplicate when the

proxies are actually looking for those types of similar female job classes.

**Ms Poole:** Thank you for that information. I just wondered if any of the people from the school board would like to comment on that. Does it alleviate your concern at all or are you still concerned that the resources will not be there to affect many applications?

**Ms A. Janet Beer:** The resources will be there if we are a proxy organization, because we believe as a proxy organization we will assist whomever to achieve pay equity. Our concern is that we could be a potential proxy organization, that the work will be done and not necessarily be used. We have no problem being a proxy organization. I will tell you however that we have difficulty even in compiling our own data provincially when we have the same title on two jobs, where the jobs are very, very different. So I have some concerns on how often this information will be gathered, and it will be similar, because we find even among our own organizations no two jobs are alike.

**Ms Poole:** Just one final very brief question. When you were talking about the 60 days being an insufficient time in certain instances to gather data, would you then be satisfied if the 60 days was in the legislation as long as there was a mechanism to extend that time frame with reason?

**Ms A. Janet Beer:** I think so. The 60 days really goes to when the request comes in. Quite frankly, some of our smaller boards with less resources at certain times of the year will simply not be able to comply.

**Ms Poole:** As long as you have that flexibility then, you'd be satisfied with the 60 days?

**Ms A. Janet Beer:** Yes.

**The Chair:** Ms Nyberg, Ms Beer, Ms Kay-Aggio, Mr Benson, on behalf of this committee I'd like to thank you for taking the time out this afternoon and giving us your presentation.

#### ONTARIO FEDERATION OF LABOUR

**The Chair:** I'd like to call forward our next presenters from the Ontario Federation of Labour. Good afternoon.

**Ms Julie Davis:** We're early. I thought I had lots of time. I was talking to the Treasurer about budgets and deficits.

**The Chair:** Just a that reminder you'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks a little shorter than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, please identify yourself for the record and then proceed.

**Ms Davis:** I'm Julie Davis and I'm secretary-treasurer of the Ontario Federation of Labour. With me today is Carrol Anne Sceviour, who is the women's issues director for the federation.

Our federation represents 800,000 members, over 300,000 of whom are women. Most are in jobs which historically have been undervalued and underpaid. For almost two decades, our federation has worked closely with the women's community and the New Democratic Party to correct this injustice by securing legislation that recognizes equal pay for

work of equal value. We therefore welcome this opportunity to comment on the Pay Equity Amendment Act, Bill 102.

We want to start by congratulating this government for tabling amendments to the act that will extend pay equity benefits to thousands of women who are presently excluded. We particularly support your commitment to making sure pay equity applies in predominantly female workplaces where no male comparator jobs exist. These changes represent groundbreaking advancements in the elimination of wage discrimination. In addition, we are pleased with the proposal of workplace postings to ensure that everyone is fully aware of their rights.

The NDP and pay equity advocates have a long history of working together in Ontario. We were all pleased and hopeful when this government took office. Right from the start, you put equity principles into practice, from the unprecedented number of women in cabinet, child support legislative reforms, an employment equity strategy, parental leave reforms, pay equity changes and decisive action on the issue of choice.

You have also implemented far-reaching changes that have opened up the entire government process and made it more accessible to the people of the province. You have said, "These are the government agencies, these are their mandates, this is who sits on them and this is how you apply to serve on them." You have said, "This is how government works; this is how you get from A to Z; this is how the decision process works."

You have asked for input from women who have never been respectfully addressed and considered by government before. The changes you are making have certainly helped to empower women and definitely go far beyond anything proposed by the former Liberal government, and I would add, the former Conservative government as well.

It was in this spirit of change and hopefulness that the consultation process around Bill 168 took place. The process was extensive and productive. Advocates lobbied strenuously for amendments to extend rights under the act, and you worked closely with the community to develop a bill that was clearly workable, and I think most of all, fair.

Our federation appreciates your reaffirmed commitment to provide pay equity funding, demonstrated by the child care down payment and the statement in the House that you will release further pay equity funding by March 31 this year.

However, when we examine Bill 102, it seems to many of us that somehow our process has broken down. Although Bill 102 incorporates many of the important recommendations we have called for, it was developed without consulting in the same way the community you have worked so closely with over the past two years. The timing has been changed significantly and unfortunately some see Bill 102 as it now stands as a possible step back from your public commitment to the women of Ontario.

We understand that the province has inherited financial difficulties. Without a doubt, Ontario has been hammered by the recession. The federal government's strategic cutbacks in transfer payments have made things even worse. However, we respectfully submit that to conclude that pay equity is too expensive at this time is a mistake. We know that pay equity is an essential investment in the economy of Ontario, that pay equity adjustments to women will go right back into our

economy. We would say that pay equity could be a major part of the economic solution.

For this reason, we ask for the opportunity to put the consultation process back on track. We're not here today pressing for substantial or clause-by-clause amendments, but what we do want now and what we believe to be reasonable and possible are amendments that will increase the number of women covered by the act and some further refinements and clarifications before the bill is proclaimed.

#### 1430

Pay equity advocates and practitioners recognize that Ontario's present Pay Equity Act is flawed and that it needs a major overhaul. The OFL is in full agreement with the Equal Pay Coalition that major revisions are necessary, but we also recognize that in 1995 the opportunity will present itself with the sunset clause.

In the short term, therefore, we propose the following steps.

The first is to include women who work in under-10 private sector workplaces. The preamble is the first area of the bill we wish to address. We strongly urge you to reconsider your decision to exclude women who work in private sector organizations with fewer than 10 employees. A woman's equality must not be based on the size of her workplace. Changing the preamble to the act so that women in under-10 private sector workplaces have the right to make complaints would take care of this problem.

Since these women already have a right under the Human Rights Code to complain about wage discrimination, it only makes sense to formalize their rights in the Pay Equity Act as well. The OFL fully supports the position of the Equal Pay Coalition outlined in a November 13, 1991, letter to Minister Silipo, who was then the Chair of Management Board of Cabinet.

Our first recommendation is the addition of a new section 1a to read:

"Employers are prohibited from discriminating on the basis of gender in the compensation of employees employed in female job classes in Ontario. All employees employed in female job classes in Ontario shall be entitled to equality in compensation with male job classes."

Secondly, we think it's important to keep the definition of "crown employer" fair. Bill 169 and section 2 of Bill 102 define an employee of the crown. We believe that the four-pronged criteria set out by the Pay Equity Hearings Tribunal to determine employers for the purposes of pay equity are fair. The tests set out in the Haldimand-Norfolk decision are very precise.

Your proposals, however, will close off the right of groups to apply the Pay Equity Hearings Tribunal's definition of a "pay equity employer" to the provincial government. They will restrict others from exercising similar rights when building the same case. By limiting the ability to meet the criteria in this way, you are in fact removing rights that have already been established to correct wage discrimination. So our second recommendation is that Bill 169 be withdrawn.

Our third is that section 2 of Bill 102, "crown as employer," be deleted and our fourth is that the OFL recommends that subsection 23(2) be deleted.



Next, we want to talk about protecting pay equity maintenance. Maintenance of pay equity is a key component of any pay equity plan. Since regulations are made through order in council by cabinet and not through debate in the House or consultation with those who would be directly impacted, giving regulatory authority to define and retroactively limit pay equity maintenance is another example of removing rights that already exist.

These amendments would allow future governments to undo maintenance of pay equity, so our fifth recommendation is that we recommend deletion of the following: section 6 of Bill 102 amending 8(5) of the act, subsection 22(1) amended by adding 36(f.1) of the act and subsection 22(3) amending by adding 36(2).

Eliminate payout delays: Throughout the public consultation on pay equity amendments, the intention was always to extend rights and coverage of the Pay Equity Act. Our federation is therefore concerned about the proposed delay in the payout of pay equity adjustments from 1995 to 1998.

Although we discussed a number of different options during our earlier consultations, this delay which we believe is a step back from your original promise of ending wage discrimination was never considered. The three-year delay will affect public sector women who have succeeded in finding job-to-job comparators, as well as having a serious impact on the pensions of women nearing retirement, so our sixth recommendation is that subsection 7(1) of Bill 102, which repeals subsection 13(7) and replaces it with (7) to (7.3) of the act, be deleted.

Extend changed circumstances amendments to the unorganized: Our federation does support your proposed amendments on changed circumstances. Subsection 14.1(7) addresses the concern of pay equity advocates that in changed circumstances, when a plan has to be amended, pay equity adjustments cannot be less than before the plan was amended. However, we would also like to see this right extended to the unorganized. Therefore, we are recommending that a new subsection 14.2(1b) be added using the same wording as 14.1(7).

Proportional value: Here we want to talk about clarifying and adjusting. Section 12 of Bill 102 provides for a comparison method called proportional value. The federation supports the general direction of the proportional value amendments, with some clarification and adjustment in a couple of areas.

For example, the section is unclear on what would happen if an employer, when required, fails to post a pay equity plan under the job-to-job provision of the current act and uses this amendment on proportional value for all the female job classes. Can the employer argue that by using proportional value he's not required to start adjustments until January 1, 1993, or will the employer still be required to comply with the job-to-job time lines in the act for those female job classes where job-to-job comparisons are possible?

In order to clear this up, we are recommending that an amendment be added to read:

"21.2(1b): Employers are required to comply with the job-to-job time lines and adjustments under the act for those female job classes where job-to-job comparisons are possible."

Protect the self-management principle: The federation also supports the government's proposals to leave the bargaining

of the how of proportional value to the affected parties. This complies with the self-managed principle of the act. We are concerned, therefore, by a proposal to give future governments the ability "to prescribe in regulation the method or methods of proportional value comparisons." We cannot support any new measure that threatens the self-management principle. Therefore, the OFL recommends that the proposed amendment to clause 36(g.1) of the act be deleted.

Compare female job class with one male job: Section 21.3 states that pay equity is achieved under the proportional value method of comparison when a female job class is compared with "a representative group of male job classes." We believe that in some circumstances one male job class is sufficient for a comparison, and accordingly we recommend that clauses 21.3(1)(a) and (b) be amended to delete "a representative group of," and further, that "classes" be amended to read "class(es)".

Honour original proportional value time lines: Bill 102 extends the time lines for first adjustment for proportional value from January 1, 1992, proposed in Bill 168, to January 1, 1993. When Bill 168 was tabled, a number of our affiliates and employers proceeded to bargain in good faith based on the Bill 168 time lines. Commitments were made and adjustments were promised. Extending those first adjustment time lines has created tense labour relations climates where women who were banking on increases are now being told they must wait. Accordingly, the OFL recommends that clauses 21.10(1)(a) and (b) be amended to read "1st day of January, 1992."

Proxy comparison: to clarify proxy comparison terminology: Our federation still holds the position consistent with the current act and outlined in our March 1991 response to The Ministry of Labour's Information Paper on Extending Pay Equity by Proportional Value and Proxy Comparison. In that document we stated, "The OFL believes that the proxy method must allow for female job classes to compare to the male proxy job class and the adjustment should be the male job rate."

To identify wage discrimination, female job classes are compared to male job classes using a gender-neutral comparison system. Your new proposal moves away from this principle. Having said this, there are areas in the proposed amendments that must be addressed.

We support the position of the Equal Pay Coalition that the terms "proxy", "seeking organization" and "proxy method comparison" are inadequate. As they explained in their brief, the word "proxy" is not generally used by the public and carries the unfortunate dictionary definition of "authority to act on behalf of another."

This implies a shift in control away from the workplace which needs to make use of the cross-establishment method of comparison in order to achieve pay equity. The terms "comparator organization" and "cross-establishment organization" are more accurate and understandable terms than "seeking organization" and "proxy organization." Further, using "cross-establishment method" better conveys the meaning of the comparison method, rather than "proxy method comparison."

Section 13, amending 21.11(1) of the act, defines "key female job class". There needs to be clarification to ensure

that where a bargaining agent exists, "key female job class" refers to those inside the unit. Accordingly, we recommend that an addition to 21.11(1) be made to read "where there is a bargaining agent, the female job class inside the bargaining unit"; further, that the term "key" be amended to read "benchmark".

Honouring the original proxy comparison time lines: Our federation maintains its position that the government should follow through on its commitment in Bill 168 in regard to time lines, and therefore we're recommending that 21.11(1), referring to pay equity achievement, be amended to read "1st day of January, 1993."

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We would like to see the process kept simple. The proposed changes to subsection 21.15(5) of the act address the issue of what happens when a similar female job class for purposes of comparison cannot be found. We do not support your proposal that would allow a proxy organization to select a group of female job classes for the purpose of comparison in cases like these. This will create not only a highly subjective process but also one that is unnecessarily complicated, will require much work on the part of the proxy organization and could result in unfair delays.

In seeking a proxy employer our affiliates believe that a simple process is the best process. Accordingly, we recommend that clause 21.15(5) be amended to allow the seeking organization to go to another proxy employer in the same geographic division. If no comparisons can be found in the same geographic division, then the seeking organization can go to the next geographic division.

Further, we recommend deletion of subsection 21.15(6).

Apply comparator pay rate adjustments to seeking employers: The maintenance of pay equity must be a key component of any pay equity plan. As with job-to-job and proportional value methods, the federation supports maintaining pay equity in female job classes using the proxy comparison method. Therefore, any adjustments in pay rate made to the comparator must be extended to the seeking female job class as well.

Accordingly, we recommend that proxy employers be required to report to the pay equity office any increase to a proxy comparator job rate. The pay equity office would then inform the seeking employer and the bargaining agent, if any.

Streamline information request process: The section of the bill that deals with obtaining information from the seeking organization is clear and fairly easy to follow. However, we think there are two areas which would make the process more complex than it need be.

Clause 21.17(2)(c) requires that requests for information be accompanied by an organizational chart. Many of our affiliates and pay equity advocates find that small organizations do not always have charts. The process of developing one could cause unnecessary delays. So we're recommending that clause 21.17(2)(c) be amended to add after "chart," "only where one exists."

As well, clause (f) is a complex and overly bureaucratic requirement that will also delay the process and, accordingly, we are recommending that it be deleted.

The federation does not support the proposed changes in subsection 21.17(4) of the act that requires proxy employers

to group jobs if a similar female job class cannot be found. We believe that the method proposed is a subjective process and should be deleted.

In reading subsections 21.17(7), (8), (9), (10) and (11), it seems that there is an excess concern about confidentiality of the information used for the proxy method. Under the present act, there is no such requirement, despite the information that is now provided to meet compliance in identifying male and female job classes and developing comparison systems.

Further, since the information deals with public sector employers, is it not appropriate that information be public? Many of our affiliates probably have the information already as bargaining agents in proxy employers and seeking organizations and, accordingly, we recommend deletion of subsections 21.17(7), (8), (9), (10) and (11).

In the interest of keeping the language in the bill simple and understandable, we recommend that wording "the calculations required by" be deleted from paragraph 21.18(2)7.

Honour original first adjustment time lines: As with proportional value comparisons, we believe the government should comply with its commitment in Bill 168 on first adjustments on proxy beginning on the first day of January 1993 and, accordingly, we recommend that subsections 21.22(1) and (4) be amended to read "1st day of January 1993."

Further, it's the position of this federation that there be a completion date for payout of the proxy pay equity adjustments. In the act, the requirement for completion of job-to-job was five years from proclamation. We believe that this same time line should be followed for proxy. Accordingly, we recommend that a new subsection 21.22(4) be amended to read: "Proxy pay equity plans shall provide for adjustments in compensation such that the plan will be fully implemented not later than the 1st day of January 1998."

Subsection 25.1(2) provides that a settlement at the hearings tribunal is binding on the parties. We believe that this section should also clearly state that all settlements should comply with the act, so we're recommending that this section be clarified to read: "No employer, employee or group of employees or the bargaining agent can waive any rights or disregard any obligation under this act."

Assert hearings for unions and employers only: Clause 20(1)(d) opens tribunal hearings to include "any other persons entitled by law to be parties." We join with other pay equity advocates in the concern that this amendment could give consulting firms status that the hearings tribunal has previously denied.

The act states that the employer and the union are responsible for implementing a gender-neutral comparison system. The proposed amendment could lead to lengthy and costly litigation as consulting firms argue for status under this provision. Accordingly, we are recommending that clause 20(1)(d) be deleted.

Subsection 20(2) proposes changes to the act's subsection 32(1.1) and assumes that local unions have the same rights as employers in workplace postings. In many workplaces, and in fact I would say in most workplaces, unions can only post material that has been approved by the employer, so the federation supports the hearings tribunal or a review office having the authority to order a notice posted in the workplace relating to



pay equity. However, the obligation to post must clearly remain with the employer. Accordingly, we're recommending an amendment to subsection 32(1.1) of the act removing the wording "or a bargaining agent for any employee in the workplace."

Permit bargained settlements that comply with the act: The OFL has identified a need to ensure that women workers, especially in unorganized workplaces, will have pay equity plans that comply with the act. We believe that the pay equity office should be able to bring a complaint before the hearings tribunal if an employer does not comply with a review officer's order or their plan contravenes the act. Most employers would comply in the interest of avoiding costly and time-consuming litigation.

In unionized workplaces, employers or the union can appeal an order. Historically, when faced with orders, unions and employers have often bargained settlements other than that of the review officer's order. Under the current structure, that order would sit in limbo.

The amendments we are proposing would clarify that the parties can settle a pay equity plan in a manner that differs from the order and that the order would then be revoked by settlement. However, settlements must meet the rights and obligations under the act. Accordingly, we're recommending the following:

Amend subsection 32(1) to read:

"(d) the pay equity office, where a hearing is held before the tribunal."

Amend section 34 with these subsections:

"(5) An order of a review officer is not revoked except by a decision of the tribunal or an agreement by the parties relating to the subject of the order," and the OFL further recommends that the amendment to subsection 32(1.1) of the act remove the wording "or a bargaining agent for any employee in the workplace."

"(6) No employer, employee or group of employees or the bargaining agent may waive any rights or disregard any obligations under this act.

"(7) The pay equity office can request a hearing before the hearings tribunal with respect to a contravention of subsection 34(6)."

Protect public sector status: We are concerned by the proposed amendment on clause 36(h) of the act. In current law, the clause allows the government to add entities to the schedule making them public sector employers. The proposed amendment could allow a future government to amend the appendix in terms of adding or removing an organization from the public sector list. Accordingly, we're proposing to delete subsection 22(2) of Bill 102, leaving clause 36(h) of the act intact.

In conclusion, the OFL celebrates many of the achievements contained in this ground-breaking bill. We also fully endorse the presentation and recommendations made by the Equal Pay Coalition to this committee.

We in Ontario are setting global precedents. We are ahead of every other country in the world in our determination to end wage discrimination against women. Pay equity as a right is almost achievable at this moment in our social and economic history. Bill 102, with these amendments, clarifications

and adjustments, will significantly increase the number of women who will benefit from our Pay Equity Act.

We would also call on you today to begin preparations for the review of the act scheduled for 1995. We believe that the complexities of the act will require study and consultation that should begin immediately, because in spite of Statistics Canada's recently released data showing that the wage gap between men's and women's wages is narrowing, we still need equal pay for work of equal value legislation. What the data shows is that women working full-time earned 2% more on average in 1991, but it also showed that the average male income remained the same.

But before anyone celebrates in this post-free-trade and pre-NAFTA era, our federation is concerned that the wage gap will indeed narrow, not from an increase in women's wages but because of a decrease of male earnings through the loss of high-paid, unionized blue-collar jobs.

For these reasons, we look forward to resuming our very positive and productive consultative relationship with this government on these extremely important amendments. This is respectfully submitted, and I'm prepared to answer any questions.

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**Mr Malkowski:** Thank you to the OFL for an excellent, comprehensive presentation and for expressing your concerns. I think your concerns are quite clear and quite valid. I'm sure we're all in agreement that this is part of Agnes Macphail's goal to see pay equity become a reality.

I'm just wondering if you would mind clarifying or expanding more on your concerns about extending the time lines from 1995 to 1998. Can you explain more of what the impact would be with that kind of delay?

**Ms Davis:** Any delay in payout of dollars to women who are entitled to them means first of all that they're earning money right now, so that they have less money that provides the kinds of things most women work for, which is food and clothing and housing for themselves and their families. If they're older women, what it means is that their pension contributions are less. Accordingly, when the time comes for them to retire, they will receive an even lower pension than they might have otherwise if the pay equity payouts had been paid ahead of time.

We're concerned on two fronts. We're concerned about the quality of life of working women and their families now. We're also very concerned about the quality of life for older women when they retire, because we know that next to children older women are in fact the poorest members of our society.

**Mr Malkowski:** Just as a follow-up on that, I'd like to ask, maybe to the parliamentary assistant, or maybe the policy person could respond to this. I'm just wondering about the concerns about the proxy method as compared to the cross-establishment method. Can you explain more about what the concerns are and what is happening with that?

**Ms Murdock:** Proxy and cross-establishment are one and the same. It's just different terminology. What both the Equal Pay Coalition and the OFL have asked is that the language be changed from "proxy" to "cross-establishment."

**Ms Davis:** We have done so because we believe that the public will more easily understand the words we've chosen than "proxy," because of the way in which "proxy" is generally used in society today.

**Mr Malkowski:** I would ask the PA to just share these concerns with the minister and inform him what the recommendations are as far as changing the terminology is changed.

**Mr Lessard:** I'm interested in your recommendations with respect to Bill 169 and the fact that you'd like to see that one withdrawn. I guess my one concern is with respect to the autonomy of local boards and agencies and the impact that might have on them. It's my understanding that it is important to have local boards and agencies have that autonomy, because they're more accountable to their individual communities and regions.

I wonder if, in taking the position you do that there should be the ability to have the crown declared as the employer, we're sort of taking on the responsibilities that should be taken on locally.

**Ms Davis:** Basically, our position is that the Haldimand-Norfolk test applies to the crown as the employer only for the purposes of pay equity. The only aspect of local autonomy that is taken away is the amount of pay equity adjustments that are given to the women who are comparing themselves to the crown. It doesn't take away anything else. It doesn't amend the existing collective agreements.

I will acknowledge that what it does is significant in terms of the pay equity adjustments because, generally speaking, particularly the quasi-public sector wage levels are substantially behind those of the provincial government. All it really does take away from their autonomy is in regard to pay equity adjustments. It doesn't affect any other aspect of the operation of their organization.

**Mr Lessard:** I'm referring to the annual report from the Pay Equity Commission, and that has a summary of the Haldimand-Norfolk decision, and it refers to the four criteria that you've mentioned in your submission that would be used to make a determination as to who the employer is for employment equity purposes. It's my understanding that in that case it was found that the municipality was the employer of the police for the purposes of pay equity and it really didn't refer to the crown, and that ability to have a municipality, for example, declared as the employer for the purposes of pay equity would still remain after Bill 169 was passed.

**Ms Davis:** I think it's my understanding that the way that it's going to apply is it's going to take—pardon?

**Ms Carrol Anne Sceviour:** There's been a recent CAS decision in Kingston.

**Ms Davis:** Yes, there's been a recent decision in Kingston, where a children's aid society was found—it was found that the crown was the employer for that group. I think it's the intent, if it's not clear, to close off all of those loopholes. I just think it's unfortunate, because while I'm fully cognizant of why the government is doing this, because of what it means in terms of dollars in transfer payments, none the less it is in fact ensuring that some women are not going to get the kind of pay equity dollars that they should be getting.

**Mr Tilson:** You know, you people criticize and quibble, but you're not appealing this decision. You have something to do about it, and this is what you do with this legislation. Your Premier stood up and criticized them for not appealing those decisions.

**The Chair:** Mr Tilson, Mr Lessard still has the floor.

**Mr Lessard:** You understand that it's fairly important for the government to be able to determine the size of the civil service, and it was brought up this morning during questioning that in order to permit these declarations that you're referring to, it might lead to the expansion of the civil service to points that we're not really sure of at this point. You did refer to the cost. You understand the position that we're in. I wonder whether you have canvassed the positions of the opposition, for example, with respect to their positions on that issue.

Interjection.

**Ms Davis:** I know that under—

**The Chair:** Would you please come to order.

**Ms Davis:** I think the question was to me. I know that under the previous government, when the Haldimand-Norfolk decision came out, we were advised by the government of the day that it was intending to repeal the legislation so as to make sure that didn't happen and, in fact, to overturn the Haldimand-Norfolk decision. They may be sympathetic today to our position, but they certainly weren't sympathetic to our position at the time that it happened.

**Ms Murdock:** Actually, this came up yesterday, because it struck me that when the Equal Pay Coalition was talking about the maintenance aspect, it didn't use the word "coat-tail," but if there was an increase, say, in the proxy group, that then the comparator should be notified and that those increases be accorded.

**Ms Davis:** For maintenance purposes. We've said the same thing.

**Ms Murdock:** Yes, and you said the same thing on page 8. But as I thought about it, I'm sort of surprised, because as I talk it through in my head, I was thinking, "Does that mean that henceforth those increases would end up being automatic?" I guess what I'm saying is that you'd have almost a situation where you'd have a single entity determining the wage for a particular group throughout the province.

**Ms Davis:** I don't think that's the application, but the principle of maintaining pay equity once it's achieved is already in the existing act. We don't want to go through all of this work, only to find, two or three or four or five years later, that it's all undone, which is why we fought hard to have that in the original act and why we're fighting hard to have it in any amendments to the act. The maintenance aspect of it is very important and I don't know that there's any other way to do it.

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**Ms Murdock:** It was just an interesting philosophical kind of thing because, when equal pay came in yesterday with the idea—I hadn't thought of it actually before. I mean, obviously, you have to maintain it because 10 years from now you don't want to be going through this whole process all over again.



**Ms Davis:** Absolutely not.

**Ms Murdock:** I would hope it took us long enough to get here. But, having said that too, I also would not want to think that a determination by—say I'm in a comparator group for whatever and a proxy group is making the decision for my salary henceforth. I am surprised that the OFL, where you bargain for wages and benefits and so on, would take that position.

**Ms Davis:** There are a number of things: One, there's nothing to say that the seeking organization, if I can differentiate between the comparator organization—there's nothing to say that that bargaining unit may not go ahead of the comparator organization for a start. There's no limit on our ability to do that. What we're saying is there's a minimum we have to have; nothing to say we couldn't go beyond that.

Secondly, the review of the act in 1995—and I assume further acts will have further review processes built into them. We're breaking new ground here. This is something that hasn't been done anywhere else in the world and I think we're going to have to keep looking at it and keep judging it as we go along. It may very well be that the maintenance provisions we're seeking now, five years from now, will say, "Well, no, that didn't work and we have to go back to the drawing board, but none the less, it's the best." Because this is new, because it's not been done anywhere else, this is the best method we can come up with, but we recognize that it's untested and that we were going to have to review it in 1995 and review it subsequent to that.

**The Chair:** Mr Curling.

**Mr Alvin Curling (Scarborough North):** I'm going to give my time to Ms Poole.

**Ms Poole:** And I will be leaving some time for Ms Caplan because I know she has some questions as well.

Quite frankly, I took offence at several statements you made in your brief. First of all, you make the statement, "You have asked for input from women who have never been respectfully addressed and considered by government before."

I submit to you that a number of the areas in which you have claimed victory by the NDP: "the unprecedented number of women in cabinet, child support legislative reforms, an employment equity strategy...pay equity changes..." That's all a big façade. This is a government that recently had shelters condemning it because it cut back in payments for shelters for abused women.

This is the government that is driving child care workers out of the sector and has been remiss in ensuring that those child care spaces are filled because it is cutting back on subsidies. This is the government that said it would defend women on pay equity, but it's the government that is now, almost two and a half years from the time it was elected and when it came in—what did it do? It has put in legislation that ended up with women saying, "We've been betrayed."

It says, "unprecedented number of women in cabinet." I can tell you, there are many times, as a woman and as a feminist, I have been embarrassed by actions of some of the women in the NDP cabinet. I do not believe you put women in as tokens; I believe you put women in because they're good, they can do the job and because they're capable.

**Ms Davis:** Is there a question in this?

**Ms Poole:** There will be.

**Ms Davis:** Okay. All right.

**Ms Poole:** The second statement that you made, "The changes you are making have certainly helped to empower women definitely go far beyond anything proposed by the former Liberal government."

I can tell you that in the Liberal government's pay equity legislation, we did not delay achievement of pay equity in the broader public sector by three years. We did not give the government the right to define itself as an employer for the purposes of pay equity, which is a right no other employer has, and we did not put in provisions that threatened the pay equity maintenance, which are all three things you have said in your brief you are unsatisfied with in Bill 102.

So I say to you, given these facts—and it's not conjecture, they're facts—how can you say this government has done a fantastic job, that it is the only one listening to women and that it has not betrayed women?

**Ms Davis:** For a start, your government left 800,000 women in the province completely uncovered, so we could start from that fact. We can start from the down payments that were made to child care workers by this government, which your government didn't do. I won't indulge in the kind of excess rhetoric that you're using to talk about the members of cabinet.

**Ms Poole:** You've already done it.

**Ms Davis:** I suggest that you should watch question period some time and see the antics from your side of the House. It certainly leaves a lot to be desired and calls into question the whole political process in the province. I think people who live in glass houses should think twice before they throw stones.

**Ms Poole:** I find this whole process quite uncomfortable, frankly, because it is the first time in five and half years that I have felt this belligerent with a witness. But I can tell you that there are not 800,000 women uncovered by this act. In fact, the Liberal government had announced it was proceeding with proportional in March 1990, which would have brought in 350,000, and the Pay Equity Commission's figures do not show that 800,000 women were not covered by the act.

Secondly, with the down payment on child care, we have no apologies to make, because what we did with the direct operating grants from 1987 on was increase child care workers' salaries to the point where two years ago they were the highest paid in Canada by far. In fact, over the last seven or eight years, they have doubled from what the average was at that time. So I'm sorry, Ms Davis, I have no apologies to make for my government. But I assume, if you want cooperation from various opposition parties, that perhaps you should consider tempering your words and looking at the fair and balanced approach as opposed to the partisan approach.

**Mrs Caplan:** I just wanted to very briefly comment on your presentation and relate it to some of the words that you had said as far as the history of the development of pay equity policy. As I think you're aware, I'm quite familiar with it, and I'm quite pleased to see how it has benefited so many groups and organizations and women in this province. I think that you were correct when you said that it was historic, landmark, leading legislation which is being viewed from around the world.

The particular discussion on Bill 169 which we had this morning about the implications for the increasing size of the civil service, which could potentially be doubled or trebled from the present 90,000, is in Hansard. I won't repeat my remarks now, but I'm very aware of that concern, and I think the taxpayers of this province would also be concerned about the government having a responsibility to define how many people were in the public service, not for the purposes of pay equity but for the purposes of collective bargaining and for the purposes of the size of the Ontario public service's manageability.

I can tell you that my position on that has not changed. It has been consistent, and it is one where government must be fiscally responsible and must be able to manage. As you come before us today, I can imagine your frustration, because I think that you were duped, deceived and betrayed by the NDP telling you when it was in opposition what it would do if it were in government and now doing something very different. So I can understand that you are frustrated and that you are not pleased with this legislation because it's not what you would have expected from an NDP government. In that regard, I am sympathetic.

**Mr Curling:** I just want to ask you a question, Ms Davis. In your presentation, you said this is quite an advanced move towards pay equity compared to the previous government. I can understand why you're saying that, but you proceeded with many other amendments. There seems to be a number of amendments you wish to take place. If the government, because of its track record, listened to you and did otherwise, if no amendments are made or it doesn't listen to your amendments, would you find that this would be a rather regressive pay equity bill?

**Ms Davis:** No. Without any of our amendments, without any of the amendments I'm seeking here today, I still find that what the government is doing moves pay equity forward. I just don't think it moves it forward far enough. I would like to see it moved forward farther. I think we've said that in our presentation.

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**Mr Curling:** So you'd expected six steps and you get half a step.

**Ms Davis:** I don't know that I would quantify it like that either. What I said is that some of the amendments we've made I would consider to be housekeeping amendments; changing words, how you describe something, a seeking organization or a comparator organization versus proxy. A lot of those amendments are housekeeping amendments, and I would hope all of the parties would be able to agree to them.

It's certainly our understanding that it's the government's sense that in order to move forward on this without a lot of opposition from the opposition parties there needs to be a minimum of amendments, so we would hope that if all the things Ms Poole has said she so strongly believes in are in fact accurate, you would find your way to supporting some of our amendments. If you do that, then I think you will find that the government will be willing to consider some of them as well; those commitments Ms Poole made a few minutes ago.

**Mr Curling:** There is one I am sure my party would support. Do you think the government would listen to us and

decide not to delay it now for another three years? It seems to me you support that too, that you're quite annoyed and disappointed that they have delayed it. You express it so eloquently—

**Ms Davis:** I expressed concern about the delay.

**Mr Curling:** —that it creates more poverty for women, it gives them a smaller pension—

**Ms Davis:** Potentially.

**Mr Curling:** —so they're perpetuating this poverty line. I think our government—our party—would support that, so we're on your side with that.

**Mrs Mathysen:** Freudian slip there, Alvin?

**Mr Curling:** You mean the "party"?

**Ms Poole:** Just somewhat premature.

**Ms Davis:** Yes, I'm sure. I wait to see it.

**Mr Tilson:** I do thank you for coming and expressing your thoughts on a very difficult issue on how we're going to solve this problem. I guess the concern many people have is the issue of the delay of the decisions, the comments that there's no protection for people under 10 employees, that who can figure out what's going on with the commissions and the government agencies. Also, whether you're on the list or off the list; that's difficult as to where those people are going to be. One of the largest complaints is that this legislation is in fact creating inequity when you look at the whole process. You have indicated that if they didn't accept your amendments, you would still support the legislation.

**Ms Davis:** Yes.

**Mr Tilson:** The problem I have with that statement, which I'd like your thoughts on, is that you say that, yet you also agree with me, expressing the concerns that there are inequities being created by this legislation, that there is a whole group of women who are being ignored. To simply say that's solving the problem—that's not solving the problem. In fact, the whole issue of delaying the legislation, and if you count the number of years forward—I know this government. The way you're speaking, your political stripe is showing, and that's fine. We're all entitled to that, and I respect that.

**Ms Davis:** It's always shown, Mr Tilson. At any time I've made a presentation, it's always shown.

**Mr Tilson:** I have no problem with that. I respect that, as hopefully you will respect my political stripe.

**Ms Davis:** Absolutely.

**Mr Tilson:** I know the government's hoping it will form the next government. Quite frankly, I don't think they will. Whether it's an NDP government, a Tory government, a Liberal government, it is a coincidence—unless they call an election sooner, and somehow I don't think they'll be as foolish as the Liberals. But they will wait two years; they're saying they can't afford it now. They're therefore assuming the next government is going to be able to afford it. There's a fallacy in their thinking which indeed ends up creating inequities. I guess my question is really a repetition of Mr Curling's question. How can you possibly ask this committee to recommend that we support the legislation unanimously if your amendments aren't accepted, knowing that these inequities have been created?



**Ms Davis:** The answer to that is quite simple. As it stands, it corrects more inequities than it leaves and provides coverage for more women than it excludes. While I would like to see the under-10s covered—and that's the kind of issue that I think it wouldn't be very difficult to get an amendment on if there were all-party agreement on—in the final analysis, to extend coverage to the 700,000, give or take, through the proxy and the proportional provisions is too important to not go forward.

Yes, I would like to see it done faster, while recognizing the very difficult financial circumstances this government finds itself in. Not to risk any more wrath from Ms Poole, I won't talk about inherited deficits and Tory government policies that have created some of the problems we're in. At the same time, we're still not prepared to accept that women should be the economy's shock absorbers, and that's why we think the implementation should be sooner.

Having said all that, will it, without amendments, move us forward? Yes, it will. Will it move it forward as far as we think it should go? No. But it's a question of choice, and given the difficult times we live in, the government has to make a choice. This is one it is making that we happen to disagree with. There will be, despite my political stripe, from time to time, lots of things I'm going to disagree with this government on. It doesn't mean I'm writing them off or that I'm going to walk away from them. None the less, I'm going to continue to do what is my responsibility on behalf of the people I have the honour of serving, and that is to push this government to move forward as much as is humanly possible.

**Mr Tilson:** One of the groups that I think you indicated your support for, that spoke yesterday, says there's never a good time. I mean, two years from now somebody could make the same argument, that the recession is still on or that we haven't come out of it yet and we need to delay further. I'm playing the devil's advocate with you because of some of the comments you're making; it's tempting to do that. At the same time, one of my arguments has been that the whole purpose, the philosophy, of the government is to do away with inequities, but by attempting to do that it is creating even greater inequities between women, let alone between men and women—between women.

The theory that supports the delay at the same time opposes the legislation; it says that now is not the time. They talk about how in 1992 there were—I don't know where they got these figures from, but there are all kinds of figures on unemployment; you can pick whichever ones you want. There were figures of 500 jobs per week in 1992. I don't know whether that's accurate, but there was a substantial amount of unemployment throughout this province, for whatever reason. It's no secret that tax revenues are down, again for all kinds of reasons. I could use my political stripe and say it's because of his policies, but I know I'll get nowhere with you on that.

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But the hospitals are in debt. There's no secret about that. We're very concerned about our health care. The nurses are coming in here, and already the nurses have shown that with pay equity they've lost some jobs. The universities are saying

that the grants the government promised for pay equity didn't materialize. I can't remember what the figures were, but—

**Mrs Caplan:** It was 2,800 jobs.

**Mr Tilson:** It was 2,800 jobs. The grants were substantial and they never materialized. The result is that the people of this province aren't going to be as educated as we had hoped, that jobs are going to be lost. I would like you to comment on that whole philosophy. I think it was the same delegation you indicated your support for that says, "Oh, well, women will have more money and they'll be able to be taxed more." An interesting philosophy, but—

**Ms Davis:** And purchase more.

**Mr Tilson:** They will be able to purchase more and be able to be taxed more. But I can tell you that there are a lot of people out there who are scared to purchase, scared to buy because of this recession. They're worried about their jobs; they're worried about security. There are women who are worried about security and the problems that are being caused by businesses leaving the country, going out of business. The gist of it is, are these people right? Is this an improper time to bring forward this legislation?

**Ms Davis:** I guess the difference between you and I, Mr Tilson, is that I suspect you look at a glass and see it as being half empty. I look at it and see it as being half full, and that's how I view this legislation. It isn't all I would like it to be, and I hope the committee will, upon reflection on the proposals we have made, find its way clear to—obviously I'd like you to move on all of them, but I certainly hope you would move on some of them, and advance another substantial number of women in this province, women who were left out of the original legislation and who have been waiting a long time for economic justice.

I can't tell you what's going to happen in 1994 with the economy; I can't tell you what's going to happen in 1995. I just know that we think it's long past time that this was moved on, and we're happy the government is moving forward with it. We would be happier if they would move forward with our amendments; none the less, having said that, we still recognize the very substantial move they're taking by introducing this legislation.

**Mr Tilson:** I have a feeling we'll probably never agree philosophically, but you have raised some points I'm sure the committee will reflect on. Thank you very much.

**Mr Arnott:** Thank you for your presentation. I would like to ask you one question with respect to one of the suggestions you've made on page 3 to include women in workplaces of 10 employees or less; nine employees, I guess. We don't have very much time, so I just want to ask you this: You've stated, essentially, in answers to some of the questions, that if the opposition parties were to support this, it would go through. I find that a highly unusual argument, and a very weak argument, given the fact that there are six members on this committee who represent the government side, and if they indeed elect to proceed with that amendment, it will pass through this committee irrespective of how I vote. I suppose if I do vote against it, which I certainly intend to do if someone moves it, I'll tell you right now—

**Ms Davis:** Now we know where you are, anyway.

**Mr Arnott:** I represent the people of Wellington—I'm privileged to be here on their behalf—and I know many, many merchants in small-town Ontario who aren't making minimum wage themselves. The effect of this would increase the salary or wages component of their expenses considerably, and they're not making—

**Mr Tilson:** That's many.

**Mr Arnott:** Yes, and that's family businesses. Those are people who aren't making minimum wage themselves, who are the single proprietors. For that reason I could never support this, in the present economic circumstances we're experiencing.

**Mr Winninger:** Are you going to send that out to the women in your riding?

**Mr Arnott:** I'm sure you will.

**Ms Davis:** It would seem to me, though, that if the employers in these private sector workplaces in your riding are making minimum wage, then I don't think they have anything to worry about, because those are the salaries the women in this workplace would be comparing themselves to.

**Mr Arnott:** No, they're making less than minimum wage in many cases.

**Ms Davis:** Then the women are already earning more than them so they wouldn't have anything to worry about, based on how you make comparisons in the workplace. We're also saying they would have the right only to make complaints, which they presently do have now under the human rights act.

**Mr Arnott:** How is it that it requires the opposition's consent to pass that amendment?

**Ms Davis:** I didn't say it required the opposition's consent to pass it. What I said is that it is my understanding that there is a number of items the government feels it would be easier to go forward with if it had all-party support, and this is one of them.

**Mr Arnott:** And I'm saying they have enough votes on this committee and in the House to pass it if indeed they want to.

**Ms Davis:** I understand that fully. I can count. I'm quite aware of the number of seats.

**The Chair:** Ms Davis, Ms Sceviour, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and giving us your presentation.

**Ms Davis:** Thank you.

#### UNITED STEELWORKERS OF AMERICA

**The Chair:** I'd like to call forward our next presenters from the United Steelworkers of America. Good afternoon. Just a reminder: You'll be allowed up to an hour for your presentation. The committee would appreciate it if you would keep your remarks slightly shorter than that to allow time for questions or comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Mr Henry Hynd:** My name is Henry Hynd. I'm the director of the United Steelworkers of America, District 6, which essentially is the province of Ontario. The person sitting be-

side me is Sue Milling. She's an administrative assistant in our national office.

Let me begin by saying that the United Steelworkers of America appreciates this opportunity to comment on Bill 102, An Act to amend the Pay Equity Act.

Over the years we have worked with many members of this government to fight for advancements in pay equity, employment standards and labour relations that help to address historical pay inequities between working women and men. Amendments to the Pay Equity Act of 1987 to extend pay equity coverage to thousands of women further demonstrate this government's commitment to find ways of correcting gender bias inequities.

Our union in Ontario represents over 75,000 workers in a wide variety of environments, including steel mills, mines, manufacturing facilities, financial institutions, hotels and nursing homes. Approximately 15% of our membership in this province is female. While some of these women work in non-traditional jobs, many work in offices, credit unions, hotels, sexual assault centres, facilities for the elderly and hospitals.

These are the women, many of them in positions where there is no direct male comparator, who will stand to benefit the most from the provisions in Bill 102. As members of the Ontario Federation of Labour and the Equal Pay Coalition, we have worked with representatives of this government to find an efficient and effective means of extending pay equity to the 420,000 women denied access to the law by the previous Liberal government.

Keeping in mind the objective of achieving pay equity through a self-managed process, we have looked at Bill 102 in terms of what improvements might help to simplify the implementation of the additional steps of proportional value and cross-establishment comparisons. In turn, we have looked at possible improvements to limit the impact of Bill 102 on employers and bargaining units that have already expended a great deal of time and resources to meet their obligations under the current act.

It is our view that some of the sections of Bill 102 and Bill 169 that may constitute housekeeping amendments or in other cases the removal of rights currently available in the act should be discussed in the context of a complete review of the legislation in 1995. We support the submissions of the Ontario Federation of Labour and the Equal Pay Coalition on these matters.

In addition, the submissions you have received from the Ontario Federation of Labour and the Equal Pay Coalition are quite detailed in their comments on the proposed method for cross-establishment comparisons. Rather than focusing on this area in our presentation, we ask you to refer to their submissions, whose recommendations we support.

The Minister of Labour, in his statement to the House on November 26, 1992, indicated that government's commitment to pay equity has not weakened but the economy has. As a result, original schedules for achieving pay equity in the broader public sector are extended in Bill 102, and effective dates for cross-establishment and proportional value comparisons as initially outlined in Bill 168 have also been delayed.

Our union has been one of the hardest hit in this recession. Federal economic policies have led to the closure of hundreds of businesses and the loss of thousands of jobs. We



can certainly understand the dilemma faced by this government in its desire to improve or introduce programs while continuing to control government spending in the face of rising health and social service costs. Nevertheless, we must add our voice to those urging this government to consider the effect that delaying pay equity will have on working women in this province, and in turn on the provincial economy.

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The introduction of proportional and cross-establishment comparisons in Bill 102 was not unexpected. Many employers, employees and bargaining agents, in anticipation of the passage of Bill 168, planned for adjustments for those female jobs that did not find male comparators, following the job-to-job approach required by the existing law.

In our experience, many of the female job classes that did not find male comparators are the lowest paid within an organization. It is these lowest-paid women who thus stand to benefit the most from Bill 102. In many cases, pay equity will allow these women, some of whom are now dependent on provincial or municipal subsidies, to provide for basic necessities of food, shelter, child care and clothing.

Women in job classes without direct male comparators have already had to wait longer for pay equity than women who may work right next to them. While ideally adjustments for women in those affected job classes should have coincided with the original schedule, we urge the government to reaffirm its previous commitment, as outlined in Bill 168, that required proportional adjustments to commence by January 1, 1992, and cross-establishment adjustments by January 1, 1993.

In terms of the extension to 1998 for achievement of pay equity in the broader public sector, we also recommend that the government reconsider the effect of this measure on employers and employees. Again, adjustments have been negotiated and expected. Furthermore, it is in many of the facilities in the broader public sector that we find the most glaring examples of gender-based pay inequities.

For example, we represent workers in privately owned nursing homes that fall under the definition of "broader public sector." Many of these employers operated for years without a union, paying substandard wages to nurses' aides, registered nursing assistants and those involved in the day-to-day care of the elderly.

The Pay Equity Act and Bill 102, in providing access to proportional and cross-establishment comparisons, have opened the door for many of these women to seek fairness in compensation practices. Their employers benefited for years in the absence of pay equity legislation. If they must now curtail costs to achieve pay equity by 1995, they must look at other areas of their business, not to the workers who have in effect subsidized their operations to date.

We therefore recommend deletion of subsection 7(1) of Bill 102 repealing subsection 13(7) of the act; amendment of clauses 21.10(a) and (b) to read "effective as of the first day of January 1992 or earlier"; amendment of subsection 21.22(1) to read "effective as of the first day of January 1993."

We strongly support the inclusion in Bill 102 of provisions allowing for proportional value comparisons. As noted above, it is often the lowest-paid job groups without direct

male comparators and those in predominantly female workplaces like nursing homes who will benefit from this initiative.

Our participation and consultations regarding proportional comparisons were motivated by an interest to ensure that the process outlined in the legislation was easy to implement for committees with little background in, for example, the mathematics of wage lines or regression analysis. It has always been our expectation that amendments to the act would be consistent with the self-managed approach in the existing legislation. As a result, we would like to focus on a couple of amendments to part III.1 of Bill 102, which we believe will assist those who must look at proportional value comparisons.

Section 21.2 of Bill 102 outlines when an employer shall use the proportional value method of comparison. It also ensures that proportional adjustments shall not be less than adjustments that may be required following the job-to-job method of comparison. Unfortunately, it is not clear that an employer should look first at job-to-job comparisons, in accordance with the existing act and schedules for posting and start dates for adjustments, before looking to proportional value comparisons. This is particularly relevant to employers who are late in meeting their posting requirements. We therefore recommend amending section 21.2 of Bill 102 to read:

"Any employer who has failed to post a pay equity plan and who can achieve pay equity for some or all of its employees in female job classes under the job-to-job method of comparison must do so before using the proportional method and must comply with the schedule for adjustments found in clause 13(2)(e)."

There are a number of different methods committees may follow to determine proportional value comparisons. In some cases, like in a nursing home or a home for the aged, there may be one or two male job classes to evaluate when determining what, if any, proportional adjustments may be required. We would therefore support language that allows for proportional comparisons to be made to "a male job class or male job classes" rather than to a "representative group of male job classes." We therefore recommend amending section 21.3 to read:

"(1) Pay equity is achieved for a female job class under the proportional method of comparison,

"(a) when the job class is compared with a male job class or male job classes in accordance with this section; and

"(b) when the job rate for the class bears the same relationship to the value of the work performed in the class as the job rates for the male job class or classes bear to the value of the work performed in that class or those classes."

Amend subsection 21.3(3) to delete "representative group of male job classes" and replace it with "male job class or male job classes."

Three sections of Bill 102 propose amendments that provide for regulatory authority that could limit the maintenance of pay equity. Implementing pay equity in many organizations has not been easy. Overcoming years of discriminatory pay practices has not happened without considerable struggle on the part of the unionized and non-unionized women and men. Many of these employers who are now in a phase of maintenance have looked at ways of reorganizing work or redefining jobs as a possible way of evading their pay equity

obligations. We cannot help but be concerned about employers' efforts and sections in Bill 102 that would allow future governments to revise, perhaps retroactively, provisions in the act regarding maintenance without a full debate in the Legislature.

We therefore recommend the deletion of section 6 of Bill 102, amending subsection 8(5) of the act; deletion of subsection 22(1) of Bill 102, amending section 36 of the act by adding (f.1); and deletion of subsection 22(3) of Bill 102 amending section 36 by adding subsection (2).

We support section 9 of Bill 102, which amends section 14 of the act to allow for changes to pay equity plans as a result of changed circumstances. In particular, we were pleased to note the inclusion of 14.1(7) to ensure that adjustments for job classes in the amended plan will not be less than those in the original plan. We recommend that a similar provision be added as a new subsection 14.2(1) to apply to non-unionized environments.

There is an attempt in Bill 102 to clarify the role of the Pay Equity Hearings Tribunal. We look forward to a complete review of the Pay Equity Act that will allow for a much-needed discussion on the legislation, implementation and appeals process to date. However, in the meantime, we support amendments to the act that will help to ensure that pay equity settlements are indeed in compliance with the act. We therefore recommend that you amend section 17 in Bill 102 to amend section 25 of the act to read:

"No employer, employee or group of employees or the bargaining agent can waive any rights or disregard any obligation under this act."

We further recommend to amend section 34 of the act by adding the following subsections:

"(5) An order of a review officer is not revoked except by a decision of the tribunal or an agreement by the parties relating to the subject of the order.

"(6) No employer, employee or group of employees or the bargaining agent may waive any rights or disregard any obligations under this act.

"(7) The pay equity office can request a hearing before the hearings tribunal with respect to a contravention of subsection 34(6)."

With respect to standing at the tribunal, we take this opportunity to support many other pay equity practitioners in calling for the deletion of clause (d) in subsection 20(1) of Bill 102 that could lead to many consulting firms requesting status at the tribunal. Responsibility for pay equity plans rests with the employers and bargaining agents, not consultants.

Finally, subsection 20(2) of Bill 102 suggests amending section 32 of the act to allow for the tribunal or a review officer to request an employer or bargaining agent to post notices relating to the act in the workplace. Unfortunately, many bargaining units can only post materials that have been approved by management. It is therefore impractical to suggest that bargaining agents and employers be required to post notices in response to requests by officers or the tribunal. This section should be amended to apply only to employers.

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In closing, Ontario's Pay Equity Act is a model of how legislation can be developed and applied to both the public and private sectors. Recognition of workers' rights to equal

pay for work of equal value crosses sectoral and regional boundaries. In Bill 102, we're extending access to the Pay Equity Act for thousands of women. It could be further improved by extending similar rights to those women who work in workplaces with fewer than 10 employees.

While we are not suggesting at this time that small employers follow steps for implementing pay equity as outlined in part II of the act, the inclusion of the following will allow women to file a complaint with the Pay Equity Commission if they believe their pay is affected by gender discrimination. We therefore support an amendment to section 1 of the act to state:

"Employers are prohibited from discriminating on the basis of gender in the compensation of employees employed in female job classes in Ontario. All employees employed in female job classes in Ontario shall be entitled to equality in compensation with male job classes."

On behalf of the United Steelworkers of America, we appreciate your consideration of our submission. We have pay equity legislation thanks to the dedication and years of hard work of New Democratic Party members. Ontario's Pay Equity Act, together with an improved Bill 102, will not only further demonstrate this government's commitment to the women of this province, but set a precedent for pay equity legislation inside and outside this country.

**Mr Curling:** I really had no question, but I'll make some comment. It seems to me that some of the presenters here—I just want to correct the record—felt that pay equity was brought in by the New Democratic Party, which isn't so. However, I want to commend you for bringing forward your brief.

The previous presenter and yourself identify a number of things that are wrong with the amendments to the pay equity legislation. I'll ask you the questions I asked the previous presenter. If none of these amendments is looked at, would you still think this is a progressive piece of legislation?

**Mr Hynd:** You're asking me a question? I thought that you weren't asking questions, that you would only make a point. Sorry.

**Mr Curling:** It's okay. I'll pass.

**The Chair:** Go ahead.

**Mr Curling:** I'll ask again, then. I thought you were listening to me. I'm saying there are many amendments to this legislation, which you admitted to and the previous presenter also admitted to. Do you feel that if it goes through without any amendments at all, it would be a progressive piece of legislation?

**Mr Hynd:** I couldn't disagree with the comments made by the last presenter. I personally would like to see, and in the organization I represent we'd like to see additional amendments made to make the act stronger. Nevertheless, the legislation, as is, is a great improvement and certainly a step forward for women and the beginning of the end of the discrimination that has been applied to women in the workplace. We would be supportive of the legislation as it currently is.

We think the proposals we have made—and we hope the committee can support them—our submissions and suggestions will improve the legislation.



**Mr Curling:** The three-year delay that has been debated, that the women of this province feel extremely let down, betrayed by this government. Do you feel it should be one of the priorities of this government to proceed and not delay the act for over three years before they can benefit from this act?

**Mr Hynd:** It would certainly be presumptuous of me to speak on behalf of women. You've already said women feel betrayed, so you would have to ask a woman whether she feels betrayed.

**Mr Curling:** I'm very surprised you feel that way. In your presentation you talked about women and you made some of those statements here in your presentation, that women have waited too long. You said that 15% of—

**Mr Hynd:** We've made another suggestion that the legislation be implemented in January 1992 and 1993, so you know where our sentiments lie. We would like the legislation to be implemented. The fact that there is a delay?

**Mr Curling:** Yes.

**Mr Hynd:** A delay in justice for women, but nevertheless, women will be served by the bill and it will begin to eliminate inequities in the workplace with respect to inequities in payment.

**Mr Curling:** Does your organization represent women?

**Mr Hynd:** Yes.

**Mr Curling:** So you could speak on behalf of some of the injustices that have been done to women in the workplace?

**Mr Hynd:** Yes.

**Mr Curling:** So I presume my question then to you, and you said you couldn't speak on their behalf, is that I'm saying the delay—

**Mr Hynd:** No. I said that I understood you to say women were very disappointed with this. I said I haven't spoken to all the women you obviously were making reference to. If you're asking how the women in my organization feel, I can maybe address that.

**Mr Curling:** I didn't hear the last part. The women in the organization feel how, you said?

**Mr Hynd:** If you want to ask me how I think the women in my organization feel, I can maybe respond.

**Mr Curling:** They feel disappointed? I'm not hearing him at all.

**The Chair:** He can respond referring to the women in his organization, but he can't speak for all women.

**Mr Curling:** That's what I'm asking. I'm asking about women in your organization then. You don't want to respond on the women in your organization? The 15% of members of your organization who are women, do they feel betrayed by this legislation that the three-year delay to implement their just worth—

**Mr Hynd:** As I say in my brief, we don't see the legislation as being perfect. We have offered amendments. We would like to see the legislation implemented sooner, but we have an appreciation of the difficulty in implementing the legislation sooner. I think that's reflective of how the women in our organization feel.

**Mr Curling:** My colleague will proceed with a question.

**Mr Steven W. Mahoney (Mississauga West):** I'm sorry I missed the first part, so maybe you'll bear with me if I ask a question that you already answered in your presentation. Could I understand, in District 6, which is who you're presenting of behalf of—I assume they're the workers you represent as the director of District 6. Is that correct or are you presenting on behalf of the national Steelworkers' union?

**Mr Hynd:** Ontario; District 6.

**Mr Mahoney:** Could you just give me—15% of your members are women?

**Mr Hynd:** Approximately.

**Mr Mahoney:** What's your membership?

**Mr Hynd:** It's 75,000.

**Mr Mahoney:** It's 75,000. Would there be a predominant industry that those women work in?

**Mr Hynd:** No. We have women who work in all the industries we've identified with probably the exception of basic steel. There are very few women who work in basic steel today.

**Mr Mahoney:** When you're negotiating your contracts, notwithstanding whether legislation exists or not, are you addressing pay equity?

**Mr Hynd:** Yes.

**Mr Mahoney:** Are you establishing male comparators to those jobs?

**Mr Hynd:** Yes.

**Mr Mahoney:** Could you tell me how you'd do that? Give me an example or two.

**Mr Hynd:** We have a job evaluation system that we've worked with since the middle 1950s. It's called the cooperative wage study that was basically established between the basic steel industry and the union. We historically felt that was a good way to measure employment and therefore the payment that one received for performing specific jobs.

**Mr Mahoney:** So you've been practising this since the 1950s?

**Mr Hynd:** No. We have an evaluation system called cooperative wage study. We felt that this evaluation system was a good system. When we examined CWS using, as a criterion, pay equity, we discovered that in the system we had there were inequities. We therefore went about devising a system where these inequities were taken out of the system and we have a new system called SES—simple, effective solution—which is a fairly simple computer-based program whereby jobs can be measured. We have sought and received approval of that system by those who would make an evaluation of jobs so that there's no gender bias.

We have established that. We have negotiated that system with several employers. Several employers have used it to establish pay equity in the workplace. So we're struggling and trying to bargain that wherever we can.

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**Mr Mahoney:** Do you find yourself in a position often where you have to back off that system? I would assume the majority of the people you represent work for large, rather than small, business.

**Mr Hynd:** No. As opposed to the perception of our union, most of our employers have less than 50 employees. The vast numbers of our members work in workplaces with less than 50.

**Mr Mahoney:** The vast number of your members work where?

**Mr Hynd:** In workplaces with less than 50 employees.

**Mr Mahoney:** Out of the 75,000 members, the majority of them work in small business?

**Mr Hynd:** That's correct.

**Mr Mahoney:** Do you find, therefore, that when you're negotiating contracts you run into a conflict? Obviously, the conflict that the government's running into, having stated its philosophical approach, is it gets into the real world and finds that it's not as easy to implement these things as perhaps it thought it was when it sat in opposition, and so it's backing off. Have you found that you have indeed had to do the same thing?

**Mr Hynd:** I don't really understand the question. If you're committed to—

**Mr Mahoney:** You don't understand the question?

**Mr Hynd:** No.

**Mr Mahoney:** There's a three-year delay—

**Mr Hynd:** Let me answer the question, if you're going to ask it.

**Mr Mahoney:** You said you didn't understand it. How are you going to answer it if you don't understand it?

**Mr Hynd:** Then if you just listen, you may get a response to your question.

**Mr Winner:** Stop badgering the witness.

**Mr Mahoney:** I'm not badgering him. He said he didn't understand the question.

Interjections.

**Mr Hynd:** I don't feel badgered.

**Ms Murdock:** I think he can look after himself.

**Mr Mahoney:** I think he can too. If you understand it, I'll listen.

**Mr Hynd:** What I was trying to explain to you is that with agreeing to a system that eliminates inequities that are gender-biased, you first must get the approval of the company. If the company isn't interested in that, then you're going to be unable to negotiate. It's not backing away. It's just that some things are unattainable and we must wait on the legislation being implemented before that can come to that workplace. What I was trying to say to you is that that's not always true. There are a number of employers who recognize the inequities and want to eliminate them, and we have managed to come to terms with that in bargaining and we've done that with employers.

**Mr Mahoney:** Could you give me some indication as to whether that's broad-based? Are we dealing with the minority number of employers you represent?

**Mr Hynd:** Yes.

**Mr Mahoney:** We're coming down with this legislation to deal with, in reality, a small number of the people who are creating the problems. If you follow me—

**Mr Hynd:** Not necessarily.

**Mr Mahoney:** If you'd just let me finish—

**Mr Hynd:** Okay. Go ahead.

**Mr Mahoney:** What I'm trying to get at is, in your experience is this a case of shooting a fly with an elephant gun in attempting to resolve a problem? I'm not saying it is. I'm asking you, in your experience negotiating in District 6, with the majority of your employers being small business people and complying with the principle that's adopted in your negotiation strategies, is this overkill?

**Mr Hynd:** No, definitely not. As I said to you, we had a wage evaluation system that we thought was fair, and really, when closely examined, we discovered that had sexually biased inequities in it. There's no doubt—I don't think anybody makes the argument; there may be some Neanderthals who do—that women have certainly been underpaid compared to males. When you make any real comparison, then you discover that women have traditionally been underpaid. I don't think this legislation will cure all of that, so I don't think you're using an elephant gun to hit some small target.

**The Chair:** One minute left.

**Mr Mahoney:** I guess you can only speak on behalf of the district which you're elected to represent, but would it be safe to say that District 6 of the United Steelworkers has some disappointment at the fact that the government appears to be backing off? I think this is the question Mr Curling was attempting to get you to answer, that the government appears to—whether the issue is justified or not, that's not my question. That's for others to decide. Since you seem to think they invented this, according to your brief, are you somewhat disappointed that they're backing off and simply are not going to be able to follow through with their promises?

**Mr Hynd:** I don't suggest in the brief that the current Ontario government invented pay equity.

**Mr Mahoney:** No, you say "New Democratic Party members." Perhaps you mean nationally. Are you disappointed at the fact that they're backing off on their pledge?

**Mr Hynd:** Okay, but you can't ask me two different questions at the same time.

**Mr Mahoney:** Why can't I?

**Mr Hynd:** I have difficulty.

**Mr Mahoney:** Answer them both.

**Mr Hynd:** I would much appreciate having only one question to answer at a time. Let me just say to you that I don't suggest, in any way, that the New Democratic Party invented legislation to try to do away with the inequities that are created in the workplace.

**Mr Mahoney:** So you retract that from your statement.

**Mr Hynd:** I don't say that; if you listen, you'll understand what I say. However, what the New Democratic Party is doing is implementing legislation that will, in some way, go towards erasing the inequities in the workplace. That's the point I make.

**Mr Mahoney:** It's contrary to the written word, but thank you very much.

**Mr Tilson:** Dealing with that, sir, you've indicated that your view is that this legislation is working towards removing



the inequities towards women in the workplace. Can you tell the committee whether the United Steelworkers of America supported the principles of employment equity?

**Mr Hynd:** Can you tell me what that's got to do with this?

**Mr Tilson:** Employment equity is a philosophy of this government which is to remove the inequities towards women in the workplace.

**Mr Hynd:** I do support that.

**Mr Tilson:** Sir, I'm asking you. I'd like to know what your union support is.

**Mr Hynd:** I just said.

**Mr Tilson:** I'm not in favour of it, in answer.

**Mr Hynd:** No, I didn't ask you. I said yes, my union supports employment equity.

**Mr Tilson:** Your union supports employment equity? Thank you. Sir, I think your membership will be interested in hearing that.

**Mr Hynd:** My membership already knows, brother.

**Mr Tilson:** I'm not your brother.

**Mr Hynd:** And I'm not your sir.

**The Chair:** Let's try to be a little less antagonistic.

**Mr Tilson:** Yes, I will try, Mr Chairman.

I'd like you to comment on the subject where you indicated in your presentation, sir, that with respect to standing at the tribunal you believe there should only be employers and bargaining agents, not consultants. I understand where you, of course, as a member of a well-known union, would say that. My question to you is that there's a large percentage of the population of women who are not represented by anyone. They are not represented by unions. Notwithstanding what this government is trying to do, which is to unionize the entire province of Ontario, and it hasn't done that yet, there are a substantial number of women out there who are not represented by bargaining agents or unions. If bargaining agents are the only ones who can represent them, who will represent them?

**Mr Hynd:** You're asking who would represent non-organized women?

**Mr Tilson:** Yes.

**Mr Hynd:** I would assume that non-organized women would represent themselves.

**Mr Tilson:** Why couldn't they have someone else?

**Mr Hynd:** They've chosen not to have somebody else.

**Mr Tilson:** No, sir. I'm asking you a question because you have indicated that you do not—

**Mr Hynd:** —believe in consultants appearing before the tribunal.

**Mr Tilson:** No, you've indicated that you wish clause 20(1)(d) to be amended. It says that the people who would be represented at that committee by any other persons entitled by law to be parties. You've said that you do not believe that consultants should be among those people, that only bargaining agents should be there. "Responsibility for pay equity plans rests with employers and bargaining agents, not consultants." There's only a small percentage of the population of

Ontario that is unionized, and my question to you is, there are a lot of women out there who will require assistance. This is a very difficult, complicated—

**Mr Hynd:** Women—

**Mr Tilson:** Excuse me, sir. If I could just finish, this is very difficult and very complicated legislation. I don't mind saying and I'm not embarrassed by saying that I have difficulty understanding a lot of the presentations that have been made to this committee. I would need someone to assist me; I would need a consultant or someone like a consultant to assist me. If only bargaining agents can represent these women, who will represent them?

**Mr Hynd:** I tried to answer you the first time. I'll try and say it slower this time.

**Mr Tilson:** Thank you.

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**Mr Hynd:** Women from an unorganized sector who wish to appear before the tribunal, there's no prohibition to them appearing before the tribunal and they can make their case. They have chosen, by their democratic right in Ontario, not to be represented by a bargaining agent.

**Mr Tilson:** Why can't they take someone in, such as a consultant, who understands it better than they? They're prepared to pay those consultants to advise them. Why can't they do that?

**Mr Hynd:** I can't think of any employee who can afford to pay a consultant to appear before a tribunal.

**Mr Tilson:** I'm just asking a simple question. You're ruling that out. I'm just trying to understand the rationale of your proposed amendment.

**Mr Hynd:** The rationale behind it is that consultants will delay the process and delay justice. That's our discovery with lawyers and consultants.

**Mr Tilson:** Interesting statement, sir.

**Mr Hynd:** Do you disagree?

**Mr Tilson:** No, I simply say that I'm admitting that I have a difficulty understanding this legislation, understanding the tables that were presented to us. If I were going towards the tribunal, I would need someone to assist me. I would not be capable. Because this legislation is so complicated, I would need some professional assistance. If I happen to be a member of a union and I have a union or a bargaining agent to assist me, that's wonderful, but what if I don't have a union or a bargaining agent to assist me? I don't have anyone. I'm going to be slaughtered, and there's a whole pile of women out there who are going to be slaughtered.

**Mr Hynd:** By whom would you be slaughtered—by the employer?

**Mr Tilson:** No, because they wouldn't understand their rights. There'd be no one there to explain it to them.

**Mr Hynd:** I'm having difficulty understanding why this woman or group of women who wish to take before the tribunal their case of an inequity in their workplace—who would they be slaughtered by? Surely the employer, like you, would have the same difficulty with the legislation as you say.

**Mr Tilson:** Fortunately the United Steelworkers of America, for example, can go and represent the 15% of their

women if they're going before the tribunal. They're fortunate. They've got you to do that, but by the proposed amendment—I'm just trying to find out your rationale, because I understand—

**Mr Hynd:** I'm having a difficult time understanding why there's a problem.

**Mr Tilson:** Well, we'll move on, because I simply don't understand your restricting people other than bargaining units when there are no bargaining units to represent them.

**Mr Hynd:** But you're giving me the impression that some employer is going to really do a job on some small group of women who are going to appear before the tribunal. That's why we're trying to carve out consultants, to try and make sure that doesn't happen.

**Mr Tilson:** I'm simply saying that if an occasion arises and they're before a tribunal, fortunately the women you represent, your union will represent them, and I'm sure you'll represent them very fine. Your union has a good reputation.

The difficulty I have with your proposed amendment is that there will be a large number of women in this province who are unrepresented. But I don't want to spend any more time, because we appear to be going nowhere on that question.

Sir, you have indicated that you represent a number of women who work in hotels. The hotel industry tells the provincial members of this Legislature that they're in dire straits in this province, for whatever reason. Generally it's taking shots at the tax structure that's being put forward by this government and the labour policies that are being put forward in this government, but for whatever reason—

**Mr Hynd:** Most of the reasons for the hotel industry having a difficult time?

**Mr Tilson:** Well—

**Mr Hynd:** No, no, but you have to understand, because you're asking me about it.

**Mr Tilson:** All right.

**Mr Hynd:** Most of the reason is that there are very few tourists coming into Canada.

**Mr Tilson:** All right. We'll get into that.

**Mr Hynd:** It's one of the big major problems.

**Mr Tilson:** I guess what I'm saying is that places like the Sutton Place Hotel are having a lot of trouble. All these hotel industries will be obliged to spend, at this particular time, because of this legislation, increased amounts of money. Are you afraid that those women might lose their jobs by a government becoming too hard-nosed and tightening up the timetable?

**Mr Hynd:** No, I'm not. I mean, I can tell you that, more than often, people who would make a statement similar to the one you just made make the same about unions, that if a place gets organized and the union places so many demands upon an employer they'll go out of business. But that just doesn't make any sense to me and I can't think of any occasion where that has made sense to us so that we've done it.

Let me just say to you that you should know, and it's probably important for you to know this, that the Sutton Place Hotel is in serious trouble, that the reason that the Sutton Place Hotel is in trouble has very little to do with the collec-

tive agreement between the United Steelworkers and Sutton Place, it has very little to do with the low occupancy rate—

**Mr Tilson:** Sir, I didn't mean for you to take offence.

**Mr Hynd:** I'm not taking offence.

**Mr Tilson:** I'm just raising that as an example.

**Mr Hynd:** I'm trying to give you some information. The main reason that Sutton Place is in trouble is the company, Lehnendorff corporation, which financed Sutton Place is in financial trouble. If you read the articles in both the Star and the Globe, it explains why Lehnendorff corporation got into trouble. It's got little to do with our bargaining relationship or pay equity.

**The Chair:** Mr Arnott, you have about three minutes.

**Mr Arnott:** Mr Hynd, thank you very much for coming in today. I appreciate your presentation.

This article that appeared in the newspaper has been discussed in the past, the headline in the Toronto Star, January 15, "Women's Pay Creeps Towards 70% of Men's." I suppose if you're an advocate of the government's brand of pay equity initiatives, if you're an advocate of that, your ultimate objective is to ultimately equate the average wages of women and men.

**Mr Hynd:** No.

**Mr Arnott:** No? That's not the objective, so that they're equal?

**Mr Hynd:** No.

**Mr Arnott:** Okay, I don't understand. What level then would be acceptable?

**Mr Hynd:** The difference between what we're trying to accomplish in pay equity is much different than saying that women should be paid the same as men. That's not what we're saying at all. We're saying that if women perform the same job as a man, they should be paid the same. If women perform a job of equal value, they should be paid the same. That's all we're saying. That's not what that article is saying.

**Mr Arnott:** No, but it says that there are a number of people who, I assume, would be very supportive of pay equity initiatives who were quite dismayed that women's pay is moving at a snail's pace.

I quote: "Maureen Leyland of the National Action Committee on the Status of Women said that at this 'snail's pace,' equal pay for work of equal value would take for ever and that is not good for the economy." So what that person is saying is that women's pay, 70% of men's, is not satisfactory and I assume that she would support additional initiatives to bring it closer into balance and, I would assume, ultimately to have it equal, entirely equal.

**Mr Hynd:** Only if, in addition to pay equity, employment equity reaches its peak where in fact you have the same number of executives, female and male, the number of surgeons, the number of doctors, the number of professors, the number of MPPs and MPs. Only then would that be true.

**Mr Arnott:** All right. You said earlier, in response to a question, that you feel this is the beginning of the end of, I think, systemic discrimination in the workplace.

**Mr Hynd:** The beginning.



**Mr Arnott:** What sort of a figure do you think would be more appropriate if 70% is not acceptable?

**Mr Hynd:** It would be very difficult to measure the effect that pay equity would have on the amount of money all the women in the workplace earn and all the money that the men earn.

**Mr Arnott:** At some point, I assume, we have reached full pay equity, according to your definition. How then do we measure that we've reached that point? Perhaps we can close up the pay equity office if we've reached total pay equity.

**Mr Hynd:** The only measurement one can make is to take an evaluation, a ruler, a judgement, a measurement that is not sexually biased and measure all the jobs there are in Ontario, and if you discover that none of them are out of line, then we will have achieved pay equity. This is only the beginning, because legislation is one thing and its implementation is another, and how people react is another.

**Ms Murdock:** A couple of things, just on the basis of the questions from Mr Tilson. Under legal clinic, \$500,000 was allocated, Mr Tilson, for pay equity, legal advisers.

**Mr Tilson:** You need more than that.

**Ms Murdock:** When there is a representation at the Pay Equity Commission, there's a difference between a consultant and counsel, so that the non-organized worker can get legal representation as required.

**Mr Tilson:** You're saying a bargaining unit can go, as well?

**Ms Murdock:** If they have a bargaining agent, they can go to their bargaining agent for representation.

**Mr Tilson:** Why not go to a consultant?

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**Ms Murdock:** The other point I wanted to correct on the record, and I'm pleased to see that Mr Hynd did too, is that dissatisfied workers are the ones who organize unions. It's not governments that organize unions. It's not unions that organize unions. It's dissatisfied workers, unhappy with their workplace. I just want to make that point. I said it a thousand times doing OLRA, but I'll say it again on pay equity.

The thing you raised—and I think pointed out a number of times, although it wasn't said this way—is the whole issue of internal inequity as compared to pay equity. I think that's where it was leading towards the end of the conversation you were having with the Conservatives. We can sit and put bills like 102 and 169 in place and, as you say, the beginning of trying to get some equity in terms of the compensation package for women, but in the end society has to change the internal inequities that exist in the workplace. That hasn't happened yet, and it's going to be a while before the attitudes of most of the male-dominated executives do that.

But I wanted to get to the particulars of Bill 102 in relation to some of the things you said on section 21.2, on giving an opportunity to employers to go back in and change a plan that has been worked out, or that they not be required to do job-to-job before they go into proportional. I know you discussed it in your presentation. It was a while back; I don't know if everybody remembers what you said. The section as it reads says:

"If a female job class within an employer's establishment cannot be compared to a male job class in the establishment using the job-to-job method of comparison, the employer shall use the proportional value method of comparison to make a comparison for that female job class."

I read that to mean that you have to do job-to-job before you do proportional. You're not the only one who has made the point that they are reading that very differently. Yesterday we had a number of groups that said the same thing, and I'm wondering how exactly you would change the wording in that section 21.2.

**Mr Hynd:** I thought we made a suggestion in our brief.

**Ms Murdock:** I realize that, but the specific language. Do you have a copy of the bill? I put the word "then" in, and I wondered if that would change your position.

**Mr Tilson:** Where were you putting that word?

**Ms Murdock:** After the comma. Following "comparison," you say, "then the employer shall use the proportional value method." I'm asking you what you would think of that.

**Mr Hynd:** That may fix it up. However, I think the suggestion we've made is clear and we'd like you to consider it. I mean, in the end result I don't have the privilege of being where you are at, in that high-paid job that was just described by somebody.

**Ms Murdock:** High-paying job? I bet you make more than I do.

**Mr Mahoney:** A whole lot more.

**Mr Hynd:** Do you want to bet?

**Mr Tilson:** I'll hold the money.

**Ms Murdock:** You see, I don't disagree. Our intent with that section and what you're saying, I think we don't disagree. The intent was that, yes, you have to use job-to-job first, and if you have jobs that don't fit into the job-to-job then you go to proportional, and if you don't have any jobs that fit into proportional then you go to proxy—if you're in the public sector, because proxy only applies to the public sector.

**Mr Hynd:** As I say, it may fix it. We'd like you to look at the one we've suggested so that it is fixed. If it gets fixed by that, then fine.

**Ms Murdock:** The other thing is really philosophical: the question of maintenance. It's just a thought I had, and I wondered whether you had looked at that aspect. A number of the groups that have come before us yesterday and today have specified that when you use a proxy comparator, the seeking group or the seeking employer should be notified of any changes or subsequent increases in the salary of the comparative group so that therefore the salary of the seeking group would be increased. My question basically is whether you might have any concerns or whether you had given any thought to or discussed that aspect of tying in to a province-wide salary for specific groups. I asked Julie the same question.

**Mr Hynd:** I haven't given any consideration to it. Quite frankly, it's much more complex than my little mind can take in all at once. I think that once you've made the proxy comparison and you've established a criterion within the workplace you're measuring, then adjustments would occur in that

workplace. I don't think you can look at something outside a workplace and adjust a job or jobs within that workplace based on a comparator that you make by proxy. I don't know where that theory comes from.

**Ms Murdock:** There is a differential in the value of the work you've been doing in one place. You go through the proxy system and end up finding out the differential and you make up the difference on the 1% per year and so on. You get that. The fear of both the pay equity coalition and a number of the other groups that came forward is, "Okay, we get that this year, 1993, and five years down the road we're back in the same boat again, where there's another differential, because nothing has been maintained in the intervening years." There is a real concern about that salary being maintained. Of course that's public sector, because the private sector doesn't have to use it. If you've used a proxy comparator, there should be some method of notification by the proxy group to notify the seeking group so that the salary can be increased every year thereafter. I was wondering if there had been any thought given to what that would do to the salaries.

**Mr Hynd:** I haven't thought about it. I would be misleading you if I said I'd thought about that, but it may be something you want to look at in the maintenance of pay equity. It does little if the legislation only brings about equity and then, as time goes on, it erodes the equity that we created. We agree that there has to be a maintenance of the system. How you achieve that maintenance, I'm not sure.

**Ms Murdock:** There is a review mechanism and so on that obviously has to be done, I would say. But then we get back to the internal inequities within the workplace and attitudinal changes, that's true.

I just wanted to thank you. I don't have any other questions.

**Mr Winner:** Actually, Mr Chair, when I asked for time, it was to make the same point Ms Murdock made about the fund for pay equity appeals. But since I do have the floor, I'd like to come back to a comment Mr Arnott made when he referred to the article indicating that women have reach 70% of male wages. There's a suggestion that that figure is open to challenge, that it's illusory, because of the artefact of the recession and the high dollar, free trade and so on, in that a lot of jobs that males have enjoyed in primary manufacturing have been lost and that would drag down the average wage for males. Once we're through the recession, we may find that there's a certain variance that is attributable to the recession itself rather than progress that women have made, that that 70% may be a little high.

**Mr Hynd:** It may very well be. As I understand, the increase they're talking about since the last measurement was made is something like 1.2%. That's something that could probably fluctuate for a variety of reasons, including some that you've explained.

**Mr Winner:** I understand that in the early 1980s, when we had another recession, there was a little blip upwards in the ratio of women's wages to men's, but it dropped back a bit after the recession.

**The Chair:** Thank you, Mr Winner. Mr Hynd, Ms Milling, on behalf of this committee, I'd like to thank you for taking the time out and giving us your presentation today.

**Mr Hynd:** I would like to discuss my salary with the people who think I'm one of these high-paid union people. I'd also like to compare the amount of tax I pay and the tax they pay.

**Mr Mahoney:** Don't be defensive about it. God knows, you're elected the same as we are.

**The Chair:** Now that all the members have gotten rid of some of the extra energy they had this afternoon, we'll continue.

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#### INTERCEDE

**The Chair:** I'd like to call forward our next presenter, from Intercede. Good afternoon. Just a reminder that you'll be allowed up to a half-hour for your presentation, and the committee would appreciate it if you would keep your remarks a little briefer to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

**Ms Fely Villasin:** I'm Fely Villasin and I'm the coordinator of Intercede. I'm sure I'm not going to take too much of your time. I have very little expertise on this subject, because for quite a while we never really thought of pay equity as applying to the constituency of workers we are working with, not because we don't think it does, but in the immediate sense that we felt very distant in terms of the coverage and protection and its relevance to our constituency of workers.

However, during our last meeting of Intercede, we had a guest who spoke about pay equity and told us about what is happening now and proceeded to convince us that we should at least come and say something about one section of what is being considered by this committee, which is the inclusion of women in workplaces with less than 10 employees. I'm warning you that I would like to defer to the other advocates who've come here, specifically the Equal Pay Coalition. What I would like to do is just present to you some concerns and some questions we have thought about and that affect us.

Intercede is an organization based in Toronto and focuses on the needs of domestic workers who do a combination of live-in or live-out care giving and housekeeping, and who are mostly foreign women of colour of temporary immigration status in Canada.

As an organization dedicated to improving the life and work situation of women employed to do work in the home, Intercede has a history of advocacy work in the areas of immigration, labour, human rights and others, seeking to change policies or laws or to improve them to ensure the formal extension of rights and protection to domestic workers. In the course of its more than 10-year existence, Intercede has largely contributed to obtaining government recognition, at the federal and provincial levels, for domestic workers' right to equal treatment under laws that previously had expressly excluded them.

So today domestic workers are protected under most of the Employment Standards Act, under workers' compensation and human rights legislation. Just recently, the exclusion of domestic workers under the Ontario Labour Relations Act was lifted with the passing of Bill 40, and therefore domestic



workers have recently earned the formal, legal right to form a union. I'm saying "formal" in quotations because, while this right has been formally granted them, we have yet to arrive at mechanisms to effectively exercise this right.

One of the justifications for the traditional exclusion of domestic workers from laws that protected the rights of other workers has been the rejection of the idea that the home could be considered a workplace, and consequently that the work done in a home could ever be done except out of love and selflessness. Thus, women struggle for equality outside the home, while it is still arduous and frustratingly slow, has gained speedier acceptance relative to women's struggle for equality inside the home as a workplace.

The perception of women's work, unrecognized, unvalued, taken for free, has always been at the root of society's and government's agonizingly slow progress in equalizing the worth of male and female labour. That's what I believe. I don't need to elaborate on this historical and traditional fact. It's important, though, to highlight it in the situation of women engaged in domestic labour.

Foreign domestic workers enter Canada under an immigration program that seeks to partially meet ever-increasing demands for domestic labour, which involves mainly child care and housekeeping. As more women have been entering the paid workforce outside the home, the gap in child care has not kept up. Therefore, those who can afford it have resorted to employing other women to replace their responsibility inside the home. The demand for domestic care giver workers has consistently increased throughout the years and has consistently not been adequately met by the supply, especially the demand for live-in domestic workers.

Meanwhile, I'm sure this committee has been made aware of the fact that an increasing number of women have been going back to the home to do all sorts of home work related to various types of industries such as garment and telecommunications.

The future of women's work seems to me to be characterized by the following: individual home work or ever-smaller workplaces and temporary or part-time, low-paying, more isolated conditions of work. That's what the future looks like to me. There are enough studies and statistics, I think, that show this trend for many women workers but especially for women workers at the lower rank of the workforce.

The amendments under consideration in this committee are aimed to eliminate discrimination against women. My purpose in appearing before you is to reinforce the appeals made already on behalf of the increasing number of women who work in the home in isolation and therefore in the most vulnerable of conditions, starting of course with my own constituency of domestic workers.

The elimination of wage discrimination against all women, especially women in small workplaces and not just women who are in workplaces with more than 10 employees, is an important suggestion to this committee that has been made by many, including the members of the Equal Pay Coalition. The fact that pay equity as it is now written will never apply to domestic workers means that women's work in the home, the caring and nurturing, indeed the replenishment and reproduction of our workforce, will never be valued. This contrib-

utes to sustaining the barrier domestic workers face in being justly compensated for the different kinds of work they do.

As a small agency with very few resources, I'm sorry that we're not able to present even a written brief and further specific arguments on other aspects of what you're considering, but I thought it was important for me to at least focus on what I could this afternoon, to give you a slice of life that is affected by this part of the current pay equity legislation. Thank you.

**The Chair:** Thank you. Questions, Mr Tilson.

**Mr Tilson:** Thank you for your presentation. I don't have any questions, Mr Chairman.

**Mr Arnott:** I'll just say thanks very much for your interest in coming forward to speak to us today.

**Mr Malkowski:** Thank you very much. Your presentation was quite something. I wish we had a copy of your brief. The information is very valuable. There are important points to consider for all of us, to remember domestic workers, those people who are there caring in our homes and caring for our children. They are a resource in our community, and I'm concerned.

You believe our legislation doesn't go anywhere to help people in places where they have 10 employees or less. That's part of your concern. Correct?

**Ms Villasin:** Yes.

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**Mr Malkowski:** So what would you suggest specifically? What would you like us to do? Would you like us to extend that to those workplaces, including the home? What would you like to see?

**Ms Villasin:** I would like to make sure that it does extend to women workers in the home. Usually the women workers in the home are in ones, not even in twos or threes, but in ones. I'm also concerned not only that the pay equity legislation applies to domestic workers, as I do speak now for them, but that also there is an anticipation of the trend of women going into home work and in fact working in the home in isolated conditions, as domestic workers do now.

**Mr Malkowski:** May I ask a supplementary question then? Would you say 90% of the domestic workers are women? Well, almost totally, very few men. When you compare with wages being made between some of the comparable jobs, would you say women are grossly underpaid in those positions?

**Ms Villasin:** I would say that right now, 97% safely, even up to 98%, are women who are doing work in the home. There are men who also do work in the home, such as male companions to the elderly or the disabled, and we have those as members of our organization as well. I am not prepared to talk about what to compare them with.

I have a notion that in terms of skill, responsibility and the two other factors that I considered in terms of comparing—the point is, most domestic workers, especially those who have care giving work, take the place of mothers or take the place of daughters. They take the place of mothers vis-à-vis children to care for on an all-sided way and they take the place of daughters or sisters, but mainly women, who take responsibility for either the disabled or for the elderly in the home.

In terms of comparison of responsibility, skill and condition of work, I would love to have the opportunity and the resources to be able to make the kind of comparisons to other male jobs.

**Mr Malkowski:** Thank you very much. Your information's very helpful.

**Ms Murdock:** You're right. Bill 102 isn't going to help under-10 and certainly in the domestic worker and the home worker situation it isn't going to be of any assistance, other than perhaps to set some kind of standard later on. After the whole Bill 40 issue, when we talked about the domestic worker and the home workers being very—people didn't realize there was a distinct difference between the two, first of all, and second, at the end of the Bill 40 hearings, the task force was established for the very issue of finding a way to get some kind of recognition or representation in terms of being able to improve their working conditions.

Because Bill 102 doesn't apply particularly but because you're actively involved in the task force, as I know, would you see that as helping in terms of the pay equity situation for homemakers?

**Ms Villasin:** In terms of the broad-based mechanisms we want to be able to set up, we see it as being the mechanisms in fact that take the place of, let's say, a negotiating entity. But if there is an exclusion, then the exclusion may actually be a barrier for the exercising of pay equity rights for the women involved in home work and domestic work.

The kind of mechanisms that we're studying now, we're actually moving towards terminating research around a broad-based bargaining mechanism for home workers and domestic workers. I think at the end of this research, which we hope to have by February, we will be able to make a decision as an organization as to what would be the best mechanism and what kind of legislation further is necessary in order for the right of domestic workers to bargain and to negotiate.

I suppose pay equity could very well enter into that but I'm not sure now how, and if there is no anticipation of including women who work in the home then, in terms of simple logic, for me, that makes it an added barrier. So I'm afraid I cannot give you a concrete answer to that, because even for the union and negotiating and enforcing rights we have not come to a point where we can say this is the mechanism that will work, okay?

**Ms Murdock:** If I'm a home worker, and pay equity by definition is equal pay for work of equal value, and so I'm doing home work, be it on computer or in the garment industry, whatever—we'll live in an ideal world here and say the task force has already found a mechanism where you have a broader-based bargaining system and so on. We had stories during the labour relations hearings where some of the home workers and domestic workers—well, home workers, in particular the garment industry—were in effect making \$1 an hour, in some instances \$3 in another example that was used, which is reprehensible when you think that the minimum wage alone covers a lot more than that.

If in the ideal world the task force has found a way whereby decent wages were being paid to the home worker and relevant to the work they were doing, would that not then

equate to pay equity if you look at the definition of equal pay for work of equal value?

**Ms Villasin:** If I understand your question correctly, if pay equity did, right?

**Ms Murdock:** If the task force has already got a broader-based bargaining—

**Ms Villasin:** I don't think so, because you see—

**Ms Murdock:** No, I know it doesn't, but I'm saying in an ideal world. We'll move down the road a little and say, "Yes, we've found a way that it's going to work for home workers and we've gotten a decent wage. They're certainly making at least minimum, if not more." Would that not in effect be, for your people at Intercede, pay equity?

**Ms Villasin:** I still don't think so. I think all a broad-based mechanism will be able to do is to assure the minimum decent standards. I think that's all it will do. For example, I can see it at least assuring paid sick leave of several days. That's about it.

But in terms of valuing domestic worth, which is for me a crux of women's fight for equality, which is—you know, I don't know how to explain that, but for me that's really the crux of it. The whole fight for pay equity and the whole fight for women's equality has something to do with the traditional inequality that is rooted in women's free labour and in the undervaluing of women's work, especially women's work in the home.

**Ms Murdock:** Well, I mean—

**The Chair:** Thank you, Ms Murdock.

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**Mr Curling:** I'm just going to be short. I want to commend you for your presentation and I think, as you said in the beginning, it was important that you present your position here because I know that Intercede, from where it started to where it is today, has really moved far and has accomplished tremendous strides. While I hear my colleagues on the government side trying to find what pay equity would be in evaluating your job, as you rightly say, what just could be established now is that minimum wages and those other things that are looked after would be looked after now. Beyond that, it wouldn't address that. But I also feel that the pay equity approach here would not be the way—this bill would not address it. But it's important that you made this presentation so it could be heard.

**The Chair:** Thank you, Mr Curling. Ms Villasin, on behalf of this committee I'd like to thank you for taking the time out this afternoon and giving us your presentation. Thank you very much.

#### BRANT STREET DAYCARE

**The Chair:** I'd like to call forward our next presenters, from the Brant Street Daycare. Good afternoon. Just a reminder: You'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you'd keep your remarks slightly shorter than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you each identify yourself for the record and then proceed.



**Ms Beverley Sobers:** My name is Beverley Sobers and I'm the program coordinator for Brant Street Daycare. I've been there for five years.

**Ms Trudy Binder:** I'm Trudy Binder and I'm an unqualified teacher working with Beverley and Nalini.

**Ms Nalini Patel:** I'm Nalini Patel. I have worked with Brant Street Daycare for five years now.

**Ms Binder:** Members of the standing committee, I thank you, as do the rest of the staff at Brant Street Daycare, for this opportunity to voice opinions regarding Bill 102.

One of the reasons that I'm speaking is due to a comment once made to me by a former acquaintance. He asked me, "So, what are you doing now?" my reply being, "I'm working at a day care," to which he replied, "Oh, that's too bad." Why this response? I haven't thrown my life away working in day care. A great part of the public still has difficulty in perceiving the field of day care and the day care worker as professional and valuable.

Bill 102 is an important step towards encouraging society and governmental systems to recognize the day care worker as a professional. An early childhood education diploma requires two years of college, made up of 21 subjects, and four field placements of eight weeks each, without pay, and long working hours with children ranging in age from newborn infants to 10 years. All these ages must be covered. Child care staff are required to have first aid training, which is to be updated yearly at their own expense. Courses, seminars and constant upgrading of skills are needed to provide quality programs. These are professional attitudes, expectations and responsibilities.

An early childhood educator teaches through play and games. Through positive reinforcement we encourage a child's cognitive development, physical development, behavioural and social development. We are trained to work together with parents and schools towards mutual solutions in dealing with each child.

Lastly, we see the child who is abused. We can make a difference in that child's future by helping him to trust someone again and by helping him to heal his damaged self-esteem. We are trained for these things and these things have a value that can be measured. It is sad, then, when one reads reports such as a national study, *Caring for a Living*, funded by Health and Welfare Canada, which reports that over 7,200 child care staff working in 969 different child care centres report wages hovering close to or falling below Statistics Canada's poverty line.

Pay equity is greatly needed in the day care profession. Child care workers were for the most part excluded from achieving pay equity as there were no male comparators. Under the existing legislation, the procedure for pay equity achievement covered only the women where female jobs could be compared with male jobs of equal value in the same workplace. Under Bill 102, the introduction of the proxy comparison method will permit women in an all-female organization to match job classes with an outside organization.

This is good news for a great many people in the day care field. We strongly urge the government to maintain the municipal child care worker as the proxy comparator, as they earn 29% more on average than the rest of the non-profit

sector. If the municipality does not offer child care, then the child care programs making use of the proxy method should be able to move to the next municipality that does.

Bill 102 will benefit child care workers in the broader community. It will provide better access to those seeking improvements to their pay equity as circumstances in their workplace change. It retains many of the positive features of the original Bill 168. It extends pay equity benefits to approximately 420,000 women previously excluded under the existing legislation, through the introduction of two additional methods of achieving pay equity: proportional value comparisons and proxy comparisons.

Day care workers have an important influence on the formative years of a child. Pay equity must come through for child care workers, or everyone will lose. Today it is more and more common and necessary for both parents to work, meaning there will be a greater demand for higher-quality child care and qualified, dedicated child care professionals. This is a problem for those who may want to work in the day care field but do not choose this career option because of the low wages and the poor public opinion of the child care.

If we cannot attract some of the best people to become early childhood educators, we are doing a disservice to our children. Therefore, we strongly urge the government to maintain the 1993 implementation of Bill 102. We also want to recommend the placing of a cap on proxy payouts. We suggest a January 1, 1998, deadline.

Respectfully submitted by the staff of Brant Street Daycare.

**The Chair:** Thank you very much. Questions and comments?

**Ms Murdock:** Thank you very much. Yesterday we had about four different presenters, from the Equal Pay Coalition and then the day care coalition and a couple of other individual day cares came in. One of the things that they recommended was in terms of the language being used. I'm just wondering—you haven't mentioned it. Actually, I think you've taken a much more personal view of what your job and so on is, so I appreciate that you didn't get into the details. But I was just wondering in terms of your own feel about the use of the word "proxy" instead of "cross-establishment."

**Ms Binder:** Pardon? Instead of what?

**Ms Murdock:** They were suggesting words like using—instead of "seeking" organization, to say "an establishment requiring cross-establishment comparisons." Instead of calling it a proxy organization, you would call it a cross-establishment, and that kind of thing. I wondered whether you thought that would clarify things, or whether you would find it even more confusing.

**Ms Binder:** Do you mean—

**Ms Murdock:** No, no, I'm sorry. Okay. It's just a language thing. I just wondered whether or not—you personally don't find the use of the word "proxy"—

**Ms Binder:** I don't use it every day, that word.

**Ms Murdock:** No, but when you hear of proxy comparisons, within the context of Bill 102 or this bill—

**Ms Binder:** What do we think of?

**Ms Murdock:** Yes. What does it mean to you?

**Ms Binder:** My understanding is that, say, if there are three day cares and one is receiving the higher income and another one is looking at the difference between two day cares and wanting to decide on how to estimate equal pay for equal value, they will estimate not between the lowest one but an average of the two higher ones. Correct me if I'm wrong.

1650

**Ms Murdock:** Yes, that's fine. But do you understand it to mean that it's a third method of comparison in terms of jobs in trying to find a way of paying you for doing work of equal value?

**Ms Binder:** Yes, and that might not necessarily be even day care work.

**Ms Murdock:** No.

**Ms Binder:** Okay.

**Ms Murdock:** That's right. It would apply to all kinds of jobs.

**Ms Binder:** Another profession where there's a similar amount of stress and education involved.

**Ms Murdock:** Right. Okay. I just wondered whether or not you felt that there was any great need for that.

**Ms Binder:** Actually, the definition of the two is a little difficult to understand, but that's about as well as I understand it, what I just explained to you, and that it can also apply to other professions to make a comparison where there is nothing to compare, say in the day care field.

**Ms Murdock:** You also said that you were unqualified, I think. Now what is that?

**Ms Binder:** Yes. That's misleading.

**Ms Murdock:** Pardon me?

**Ms Binder:** That means that I don't have an ECE training.

**Ms Murdock:** Okay, but obviously you've taken courses, because you said that too.

**Ms Binder:** Yes. Also, I am by profession an illustrator and I'm also a musician, so I have a lot of resources. I was only hired because I have a lot of varied abilities to work with people who have been trained, so I'm assisting them. But I'm also a day care worker and I'm working full-time. But I don't have a degree.

**Ms Murdock:** That affects your salary, I would presume.

**Ms Binder:** Yes. I shouldn't earn as much as they do because I don't have a degree, but I'm still working with the children, and I have to take first aid.

**Ms Murdock:** Yes. Have you done comparisons in terms of salaries with other organizations in terms of what you get, any one of the three of you, as compared to other organizations?

**Ms Sobers:** We haven't really done comparisons, but our day care is probably on the average. On any curve line we're probably right in the middle. We don't earn a lot, but we don't earn too little. So a non-ECE will earn basically what the average non-ECE would make. I can't really give you figures, but we're on the curve line and we would be in the middle. We don't earn 29% more—you know, Metro—

**Ms Murdock:** Don't you wish, eh?

**Ms Sobers:** Yes.

**Ms Akande:** I recognize that you're an unqualified child care worker, but you do, as you have spoken, bring many other skills to the situation, skills which have been valued in such a way that they feel it's important to have you employed there full-time. I don't know whether you know or not, but there are teachers who do not have degrees who have in fact been or through pay equity will be evaluated in such a way as to bring up their income, increase their income.

With the extra skills that you bring, I would imagine that comparing you appropriately to other groups outside that have those musical skills and use them with children, as well as some of the other things that you mentioned, might bring up your income so that it is equal to those who are qualified. What would perhaps the rest of you say about that having been a consideration? Has that been considered at all or discussed at all?

**Ms Sobers:** That hasn't really been considered, but if I was to answer the question, I believe anybody who does not have a degree but has other qualities that they could bring forward into the program, sure, their salary should go up as much as it can, but I do not want to demote education, what you should actually lean towards in order to work in an early childhood education program. Something fair is also something that I would feel is positive, and she will probably deserve it. She works just as well as we do, the same hours, but education is more important, so I do believe that if you go to school you should get a little bit more pay.

**Ms Akande:** Would you evaluate, or would you consider perhaps would be more appropriate, that evaluating the education she has acquired around her musical skills—I remember you mentioned some other things—

**Ms Binder:** I use my illustration far more than my music.

**Ms Akande:** —or in illustration, in some ways, since it is considered useful to use, therefore should be considered useful in the evaluation for pay?

**Ms Sobers:** You would like—

**Ms Akande:** I would like to evaluate the skills or the education received in achieving those skills in music and as an illustrator to be possibly considered in assigning a level of pay, as well as the work that she's doing. Would you consider that appropriate? That is really the basis of pay equity.

**Ms Sobers:** I consider it appropriate.

**Mrs Caplan:** Supplementary to the question that Ms Akande just asked, I don't want to leave you with an incorrect perception, and perhaps it might be helpful to Ms Akande. The legislation that's before you and in fact the legislation that's in place in Ontario assesses the job, not the individual doing the job. So as to your additional skills or your lack of attainment of degrees or that sort of thing, it would be up to the employer to determine which job you were able and qualified to do and then your performance would be assessed and appraised on the basis of performance.

The rate that is established under pay equity and the comparisons are for the job class, and it's a very technical kind of thing, but it wouldn't be impacted in any way by the specific talents an individual would bring to that job. In fact, it has nothing to do with the assessment of the individual but the



value of that job to the employer. It has to do with the value of jobs and job classifications, which is a very different kind of thing.

I didn't want to leave you with the impression that your educational requirement as an individual person or your personal enhancements and skills and musical abilities and anything else would affect a job valuation plan for the purposes of a pay equity plan. It's a hard concept to understand. It's the concept of the value of the job, not the person doing the job. I just wanted to clarify that.

**Ms Akande:** If I may, because this is an interesting point, it is one of the considerations that was assigned when we looked at it and discussed it when I was on the negotiating team and discussing this through the federation of women teachers, the kind of pay equity we would apply to teachers who, although qualified as teachers, did not have what would be the additional qualification now demanded, a degree. We looked at the value they continued to bring to the job and how that value was to the job.

**Mrs Caplan:** That would be for a job class which was classified as a teaching assistant or whatever who did not have a degree, so it wouldn't relate to the individual applying for that job. The requirement, the qualification for that job class would mean you don't have to have a degree, and it was an assessment of the value to the employer. Is that correct?

**Ms Akande:** I would imagine too that there would be many child care workers who work as such without the actual qualifications.

**Mrs Caplan:** That would be a different job category within your plan. I just want to make sure that was clear because the whole concept of pay equity has very little to do with the personal individual doing the job. It's sometimes confusing to people and they say, "I'm worth more because I have an extra degree." But if that job has been evaluated—as we know, women's work has been undervalued by society for so long that we sometimes forget that aspect of the pay equity plan. I didn't want to get into that but I felt it should be clarified.

**The Chair:** Thank you for that clarification.

1700

**Ms Poole:** Thank you very much for coming before our committee. Your presentation has been valuable to us because, first of all, you're the front-line workers, and secondly, child care workers have made an enormous contribution to society that hasn't always been recognized. It gives us an opportunity to say thank you for what you're doing for our children.

I'd like to ask you about a certain part of Bill 102. Under the current legislation which was passed back in 1987, it gave benefits to a certain group of women. You were excluded from that group because you were in sole female occupations. When it gave benefits to women in the broader public service who were able to do a job-to-job comparison, it said there was a deadline of January 1, 1995, by which time those women were to have achieved pay equity.

This doesn't directly affect you because you were excluded from that act, but I wanted to ask you this question: The government has delayed that deadline by three years, so now it will be January 1, 1998, for the women in the broader

public service who were to have achieved pay equity. Do you think it is right that the government would make that extra delay? I ask you because you're somewhat more objective.

**Mrs Caplan:** They've been waiting a long time.

**Ms Sobers:** That's right.

**Ms Poole:** You've been waiting a long time and these other women have been waiting a long time, but they're told now that they have to wait even longer. You're more objective because you aren't affected directly by that three-year delay. You're affected by the other portion of Bill 102. Would you like to see that deadline going back to the original legislation passed by the Liberal government, which said January 1, 1995, or do you buy the government's argument that these women should wait because the economy is bad?

**Ms Sobers:** I think we've waited long enough. How much longer do we have to wait? We always seem to wait until the government says it's okay to change. How about us? We're the ones telling you it needs to be changed now. If they keep on putting it ahead, that's another step backwards. The longer they put it forward, we go backwards. Another couple of years we'll be fighting, and then five years from now, myself, Nalini and Trudy will be back here saying, "When is it our turn?" It has to stop. We need our turn and our turn is now.

**Ms Poole:** Thank you. You've been very helpful. I think what you've said is that the economy may go up or down, but women have waited so long that you just don't want them to wait any longer.

**Ms Sobers:** That's right.

**Ms Poole:** Thank you very much for your presentation today and your comments.

**Mr Arnott:** Thank you very much for coming in this afternoon to explain your particular point of view on the pay equity issue. I assume that Brant Street Daycare is a non-profit day care centre. That's correct?

Interjection.

**Mr Arnott:** Okay.

You stated on page 2 of your brief that you would urge the government to maintain the child care worker as the proxy comparator with the rest of the non-profit day care workers. You say they make about 29% more on average than the rest of the non-profit. We had a presentation yesterday from a group of day care workers who indicated there was a significant problem in terms of staff turnover at non-profit day care centres. The wages/salaries were too low to keep certain people who would elect to go on to another, presumably higher paying job somewhere else. Is that your experience as well? Do you have that problem at your day care centre?

**Ms Sobers:** I think it also depends on the quality of the child care. Where we are, we have all been at this day care for five years. So that in itself is great. But yes, there are a lot of day cares where there is a lot of turnover, but that is because basically, as you said, you're not making enough money. So they do want to move ahead to another day care where they can get a larger salary. That in itself makes the other day care they left look bad. That shows you again the inequality of the

whole situation. If the salary is good, the staff will stay. If it's not good, you leave, like any other job.

**Mr Arnott:** How many staff are there at your day care?

**Ms Sobers:** Eight.

**Mr Arnott:** Looking after how many children?

**Ms Sobers:** An average of 60.

**Mr Arnott:** If it's a problem in some day cares, would you assume that many of the people who leave a day care for a municipal day care and go seeking that 30% increase—I'm just a bit surprised that you've had, I suppose, such a good staff continuum, that you've maintained the numbers you've had. Are there many opportunities for people to go into the municipal jobs? Are those very highly competitive in terms of those opportunities?

**Ms Sobers:** Because of the situation that everybody's leaving, it will become harder to get into those places. That's another reason you've just mentioned, why again you have to stop this now and deal with the pay equity situation, because if everybody's leaving and they're all going to those municipalities, there will be no room. If I want to leave my job I can't go and work in a municipality, because it's full. You'll have a large line, a waiting list, and we already have enough waiting lists in day care, whether it's subsidy waiting lists or waiting to get into the day care. There are enough lists.

**Ms Murdock:** Tell me about it.

**Ms Sobers:** That's right; universal day care.

**Mrs Caplan:** I have a question I'd like to place to the parliamentary assistant, if I could, Mr Chair. Is that acceptable?

**The Chair:** A brief one.

**Mrs Caplan:** Brief. Could you tell me, just for clarification—this group before us today represents a day care. They work for an employer that has under 10 employees; there are eight of them. Will they fall under the scope of this legislation?

**Ms Murdock:** Under 10, even in the public sector? No.

**Mrs Caplan:** So I think we should tell them, "You are excluded from this legislation."

**Ms Murdock:** Oh, I'm wrong.

**Ms Binder:** We were told that wasn't a problem.

**Mrs Caplan:** That's why I'm asking the parliamentary assistant to tell us, is this employer included under the legislation or not? That's why I'd like clarification.

**Ms Murdock:** Actually, my understanding was—

**Mrs Caplan:** You may want to make a different presentation before the committee if you're excluded.

**Ms Murdock:** Yesterday, the schedule was submitted along with the charts, when you were here yesterday, the schedule lists seeking employers and proxy employers and they would fall under that, "services for children and families."

**Mrs Caplan:** So my question is, are they covered?

**Ms Murdock:** Yes.

**Ms Binder:** We found out yesterday—

**Mrs Caplan:** Because I think it is important. We've had a number of groups coming and saying they felt that establishments with under 10 should be covered. I think there's

been a perception that this establishment would not be and I think it's important to clarify it in this situation.

Sorry there was that confusion. I just wanted to make sure you knew, before you left, whether you were or were not covered and I'm glad the parliamentary assistant was finally able to figure it out for you.

**Ms Murdock:** Finally got it, yes.

**Mrs Caplan:** There is some confusion, because we've heard discussions of the discriminatory nature of this legislation and what we know is that women in the private sector in workplaces with fewer than 10 employees are still not entitled to a proactive pay equity plan.

**Ms Murdock:** Private sector doesn't use proxy, though. I mean, the proxy does not move to—

**Mrs Caplan:** So I guess my question is, if there was a commercial child care centre with eight employees, are they covered by this legislation or not? Yes or no?

**Ms Poole:** Because they are private employers.

**Mrs Caplan:** That's private sector, if it's a commercial child care centre.

**Ms Murdock:** That's a good question. I would have to find out the answer, but I would say it wouldn't fit.

**The Chair:** Possibly you could come back with that answer tomorrow.

**Ms Murdock:** I will check with my ministry staff tonight, maybe, and get back to you tomorrow.

**Ms Poole:** Can I just ask, for clarification, are you a commercial child care centre, a private child care centre or a non-profit?

**Ms Binder:** Non-profit.

**Ms Poole:** So you definitely would be covered under the broader public sector.

**Ms Murdock:** They'd be okay.

**Ms Sobers:** I just want to make a statement that if we are not included, then there's no other way to say it, it's basic discrimination and very prejudicial in the sense of comparing us to only male jobs and lessening the value of the female job. There really should be no comparison, because a job is a job.

**Mrs Caplan:** How do you feel about your colleagues who are doing the same job in a child care centre in a private sector operation? They are not covered. Do you think that's fair?

**Ms Sobers:** That's not fair either. Private sector, small business, they're doing the same job.

**Mrs Caplan:** We hear so much from Bob Rae and the NDP about what's fair.

**Ms Sobers:** There are different classifications, but personally, if you went to the same school as I did, if you have the same degree, if you went through the same courses, you deserve the same pay as long as you have the educational background. As long as the day care is run properly, qualified day care, quality day care, there's no reason why the private sector shouldn't receive it as well.

**The Chair:** Ms Binder, Ms Sobers, Ms Patel, on behalf of this committee I'd like to thank you for taking the time out



today and giving us your presentation. Thank you very much. Seeing no further business before this—

**Ms Murdock:** I just checked with my ministry staff. Jane is very helpful, thank God.

**The Chair:** Okay, Ms Murdock.

**Mrs Caplan:** Thank God and a whole lot of other people.

**Ms Murdock:** What would you do without your ministry intelligence? We certainly rely on them and they certainly help us. Chapter 34 of the regulations of the existing Pay Equity Act states that day nurseries operated by corporations and municipalities under the Day Nurseries Act, RSO 1980, c 111, receiving direct subsidies from the Ministry of Community and Social Services are covered. Day nurseries and private home day care agencies providing services and funded under agreements with municipalities under the Day Nurseries Act are covered.

**Mrs Caplan:** Regardless of size?

**Ms Murdock:** Yes, regardless of size. Most commercial day cares would be caught under that in some form or another, except if it is totally private and it's under 10, they're out of luck. I wouldn't want anybody to go around thinking

that every single one is covered, but if they receive any money from the municipalities, then they would get caught under that regulation.

**Ms Poole:** One other clarification, if you get it even for tomorrow: What about a private sector child care where, for instance, they may have several children in who are subsidized but the centre itself receives no subsidy? There are two ways in Ontario that centres are treated, depending on the municipality. For the ones which are not receiving a direct grant or subsidy from the provincial government and yet they have children in there who are receiving subsidy, could you check and see what status those have?

**Ms Murdock:** That are or are not receiving subsidy?

**Ms Poole:** Where the children are receiving a subsidy but not the centre itself.

**Ms Murdock:** I see, not the centre itself. Okay, I'll look that up.

**The Chair:** Seeing no further business before this committee, this committee stands adjourned until 9:30 tomorrow morning.

The committee adjourned at 1713.





**Substitutions present / Membres remplaçants présents:**

Arnott, Ted (Wellington PC) for Mr Runciman  
Caplan, Elinor (Oriole L) for Mr Chiarelli  
Lessard, Wayne (Windsor-Walkerville ND) for Mr Morrow  
Mathysen, Irene (Middlesex ND) for Ms Carter  
Murdock, Sharon (Sudbury ND) for Mr Wessenger  
Poole, Dianne (Eglinton L) for Mr Mahoney  
Tilson, David (Dufferin-Peel PC) for Mr Harnick

**Also taking part / Autres participants et participantes:**

Allan, Jane, policy adviser, Ministry of Labour  
Mahoney, Steven W. (Mississauga West/-Ouest L)

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service

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- \*Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)
- Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)
- \*Akande, Zanana L.** (St Andrew-St Patrick ND)
- Carter, Jenny (Peterborough ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin** (Scarborough North/-Nord L)
- Harnick, Charles (Willowdale PC)
- Mahoney, Steven W. (Mississauga West/-Ouest L)
- \*Malkowski, Gary** (York East/-Est ND)
- Runciman, Robert W. (Leeds-Grenville PC)
- Wessinger, Paul (Simcoe Centre ND)
- \*Winner, David** (London South/-Sud ND)

**\*In attendance / présents**

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## Legislative Assembly of Ontario

Second Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 20 January 1993

### Standing committee on administration of justice

Pay Equity Amendment Act, 1993

Public Service Statute Law  
Amendment Act, 1993

## Assemblée législative de l'Ontario

Deuxième intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 20 janvier 1993

### Comité permanent de l'administration de la justice

Loi de 1993 modifiant la Loi  
sur l'équité salariale

Loi de 1993 modifiant des Lois  
en ce qui concerne la fonction  
publique

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 20 January 1993

The committee met at 0942 in room 228.

### PAY EQUITY AMENDMENT ACT, 1993

#### LOI DE 1993 MODIFIANT LA LOI SUR L'ÉQUITÉ SALARIALE

### PUBLIC SERVICE STATUTE LAW AMENDMENT ACT, 1993

#### LOI DE 1993 MODIFIANT DES LOIS EN CE QUI CONCERNE LA FONCTION PUBLIQUE

Consideration of Bill 102, An Act to amend the Pay Equity Act / Loi modifiant la Loi sur l'équité salariale, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act / Loi modifiant la Loi sur la fonction publique et la Loi sur la négociation collective des employés de la Couronne.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. We will be continuing our public hearings on Bill 102, An Act to amend the Pay Equity Act, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act.

### ST LAWRENCE COOPERATIVE DAY CARE KYLE RAE

**The Chair:** I'd like to call forward our first presenters for the morning from the St Lawrence Cooperative Day Care. Please come forward. Good morning. Just a reminder that you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you would keep your remarks slightly briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

**Ms Jane Mercer:** My name is Jane Mercer and I'm the administrator of the St Lawrence Cooperative Day Care in Toronto. The organization was established in 1979, and it provides child care for over 100 children in the downtown community of the St Lawrence neighbourhood.

The vast majority of our parents are young, economically disadvantaged and female, and they are raising their families on their own. The vast majority of our teachers are also young, economically disadvantaged and female, and they worry about how they will ever afford to raise a family. As I'm speaking to you today, I'm speaking for the teachers of St Lawrence Cooperative Day Care as well as the parents of the day care, and I'm doing so because over 100 children depend on these women.

As you are all so aware, 45% of Canadian children of single parents are raised in poverty. They begin their lives at a tremendous disadvantage, a disadvantage that affects every aspect of their development and determines their future. As you are also all so aware, women, on average, earn 70% of

what men earn. How the one is affected by the other is not a difficult connection to make.

These children, as well as these parents and these teachers, are among thousands around the province who are counting on this government to do three things that may just start to turn things around:

(1) The women and children of this province look to this government to implement legislation beginning January 1, 1993, that will enable all women employed in the broader public sector to compare their jobs to male jobs in similar establishments through the use of both the proxy and proportional methods.

(2) The women and children of this province look to this government to allocate the necessary resources to implement this legislation and to place on that a cap to make the payment by December 31, 1998.

(3) The women and children of this province look to this government to set up a process that ensures that boards of directors of child care centres throughout the province will be able to follow through on this legislation.

If the women and children of Ontario can't look to you, this NDP government, with the platform that you ran on and with more women in your cabinet than we have ever seen before, to make pay equity really happen, then who can we ever expect to do this? If it doesn't happen this year under this government, then it isn't ever going to happen, and for that, our daughters will hold you responsible.

**Mr Kyle Rae:** Good morning. I'm Kyle Rae, city councillor, city of Toronto, and I'm the chair of the city of Toronto's personnel committee and a member of the executive. I just have a few points to make on employment equity; sorry, pay equity. I've been dealing with employment equity with the firefighters for the last three weeks so I have that on the brain.

That the pay equity legislation needs fixing should be no surprise to anyone. From the moment it was introduced, many individuals and organizations from the public, private and community sectors have been critical of its conceptual approach, its limitations and indeed its method of enforcement.

If we are at all interested in addressing equity, we must look at all those factors which contribute to creating inequity. It is a well-known fact that both wages and representation go hand in hand. Yet on the one hand we have pay equity legislation which does not address injustices created for the individual, nor does it address workplaces where there are less than 10 persons. On the other hand, we have proposed employment equity legislation which only addresses representation, and still only in some workplaces.

In addition, while legislation is increasingly moving in the direction of improving individual human rights, this approach to equity, while purporting to improve the wages for women, can only do so for some women.

In keeping with the intent of the Pay Equity Act, the city has found itself the employer of one of three employee groups of the Toronto Public Library Board. For all other

purposes, including collective bargaining, day-to-day management etc, the board is the employer, not the city. Yet now the city finds itself accountable for fulfilling management responsibilities under the Pay Equity Act.

This decision means that the city is now interfering in the board's ability to manage its employees, perhaps even undermining the board's autonomy. Specifically, pay equity is closely linked to pay practices, which in this instance are subject to the collective bargaining process between the board and its CUPE locals.

Pay equity is not an isolated issue; it is related to job evaluation and wage parity. To have different groups bargaining different aspects of such closely related issues for the same workplace severely restricts the employer's bargaining flexibility.

Pay equity is an ongoing process that requires maintenance. City involvement will not stop after any initial agreements but would continue indefinitely. This not only has major resourcing implications, but it will continue to impact on the autonomy of city boards, agencies and commissions. Typically, the city is a funder of these agencies and does not have a direct relationship or control of the organization or its employees.

Although it is important to expand coverage under the legislation such as you have proposed with the introduction of proxy and proportional value, there are still issues regarding the responsibility of those who would be used as the proxy comparators. What resources will be provided to employers to provide data and information in the proxy format? Who will absorb the costs for this? Will the Pay Equity Commission do this?

While I think these changes are necessary for improving the pay equity legislation, they still do not do enough to address the economic situation of women. With this type of piecemeal approach to equity, we cannot hope to eliminate poverty in this province. It is clear that to achieve equity we must implement policies and strategies which address the problem itself, and that is poverty.

**The Chair:** Thank you. Each caucus will have about six minutes for questions and comments.

**Mrs Elinor Caplan (Oriole):** I really don't have any questions. Your presentation was very clear. We've heard this from other groups before and I just want to say that I'm sympathetic to your frustration, because this is not the legislation Bob Rae promised, either in opposition or in the Agenda for People. This is not what women who knew the NDP position on pay equity expected from this government. I understand the position you're taking and I'm sympathetic to your frustration because I know that you're feeling deceived. Many groups have come before us to share that frustration.

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**Mr Ted Arnott (Wellington):** Thank you both for coming in today to address us. As Ms Caplan indicated, we've had a number of different day cares come forward to express their interest in and concern about this issue. I'd just like to know how big your day care is, how many employees and how many children you look after.

**Ms Mercer:** Our enrolment is just over 100; it's about 110 at the moment. We employ somewhere between 15 and 20 full-time staff. I haven't counted heads lately.

**Mr Arnott:** Where are you located?

**Ms Mercer:** We're right in downtown Toronto near the St Lawrence Market in that whole red brick co-op land.

**Mr Kyle Rae:** My constituency.

**Ms Mercer:** Ward 6.

**Mr Arnott:** Pay equity is costly. No one disputes that. It's very difficult to quantify what it's costing. I have a number of questions and I hope they can be answered over the course of this exercise that we're undertaking.

When we've got a \$9.9-billion projected deficit this year, and actually it appears the provincial government borrowed in excess of that, how would you counsel the government in terms of new social spending initiatives relative to the size of our deficit? Would you encourage them to "let her rip," as they say, and increase the size of the deficit in the interests of social justice, as you see it?

**Ms Mercer:** This is like the kind of old million-dollar question and I don't expect I'm going to cover it in a couple of minutes. There's certainly no doubt that the women in Ontario, in the name of social justice, have every right to expect that. This is not something that is a privilege. This is not something that should be seen as, "It's wonderful that you've done it." I think it's something that's appalling that it hasn't been addressed before.

I think you have to bear in mind that of all the revenues you put out, at least half of those are going to come back through your taxes. I think it's a question that you should take to women who are living under the poverty line and put to their children. We have 45% of children of single parents and there are a lot of single parents out there. I don't know what the percentage is in that of homes that break up or who were single parents from the outset. It's a large percentage that are living as single parents and 45% of them are below the poverty line. That means they're not eating.

I don't know where you're going to find the money but I think you could start by closing some of the tax loopholes in the upper brackets. You've got tax write-offs that these women don't even dream of.

I can't answer any better than that. I don't think it's a question of sitting here debating dollars and social justice. I think you've got to put food on the plates of the children who are out there.

**Mr Gary Malkowski (York East):** Thank you for your very impressive presentation. I think your information was very clear and your concerns are valid. I have no disagreement with that.

For the record, the Liberal government introduced legislation in 1987, the Pay Equity Act, and there was a statement by the Liberal government back then. The Liberal government made a statement, a commitment to pay equity legislation. That was in March 1990, but that was all talk, and where is the action? I think nothing has happened and we are trying to take leadership now on this legislation, which is the reason we've introduced this.

We believe our legislation is an improvement when you compare it to the pay equity package the previous government



introduced. Our cabinet is more than half women; I think more than 50% are women, and that's something the Liberals did not have. I think that reflects the sensitivities of each group. I'd like to know if you agree with that.

**Ms Mercer:** If I can take two points that I heard there, one is that the Liberals had not done any more than the NDP government has done, that in fact it did less, so we've got an improvement. I would say yes, we have got an improvement. This is certainly the best we've done so far.

The point I was trying to make in my deputation is that we count on your government to do this and do it properly and to get it all the way through, because if we don't get it done under you, we will never get it done. That's why I say our daughters will hold you responsible, because the next Liberal government won't do it and the next Tory government won't do it, and we will just never get that done. So we've got to do one better than just improving the situation; we've got to get it right, and we've got to get it right this year.

**Mr Malkowski:** If I can ask a supplementary to that, following up on some of your comments about the government definitely facing a serious deficit once pay equity legislation is enacted, do you not feel there will also be economic benefits stemming from that? If so, what kind of impact do you think it would have? How will it be impacting your own day care staff? What kind of projections would you make, positive and negative both? You've talked a little bit about the economic growth. Do you think that will stem from the enactment of this pay equity legislation? Could you expand a little on the positive effects you see happening?

**Ms Mercer:** In terms of the positive effects for the staff in our day care, certainly if their salaries go up, that's going to be one positive thing. Of course, the negative is that half of it's going to come off in taxes. They aren't, unfortunately, in the bracket where they can benefit from all the loopholes and the write-offs; they can't make those kinds of investments. But that certainly is going to be positive for the staff in our day care, and in turn that means greater stability. We have a lot of young staff and they don't stick around. They do this for three, four, five years and then they move on into another field, maybe, or they end up leaving and getting married and staying at home with their children, because they can't see that they can support a family and keep working.

I don't know if that answers your question, but it will certainly be positive for our staff and the children in our centre, and just in terms of stabilizing the entire workforce, which includes a lot of women.

**Mr Malkowski:** I think you did answer me very clearly. This information has been very helpful.

**Mr David Winninger (London South):** I think I understand and appreciate your arguments, and I think you may understand our position but may not appreciate it. There was a statement you made both in your presentation and in response to Mr Malkowski's question that if this government, with a higher representation of females in it than ever before, doesn't do this, then no other government will.

I think we need to be clear on one aspect of this discussion, and I think you might admit this: that this piece of legislation does extend to an estimated additional 420,000 women. It's a positive step, the implementation of which is

being delayed, but at the end of the day, in 1998, the tab will be the same. The reason Minister Mackenzie gave on Monday morning was that the Treasurer has said this is not business as usual.

You can accept or reject that position if you choose to do so, but I think it should be clear that once this legislation is in place, albeit the implementation of which is delayed, it will be very difficult for any future government to undo, because I don't think it will be acceptable to the vast majority of certainly women voters out there and many enlightened male voters as well. So it is something that is being done that will be very difficult for future governments to undo. So I don't think you need to despair and say that if this government doesn't do it, no other government will. You have a perfect right to say it should be done now and in full, and it's your right to submit that. I don't argue with that.

**Ms Mercer:** We don't have a crystal ball. I would certainly like to think you're right, that between all the enlightened male voters as well as the women voters, that we can see this all happen. We've just all waited way too long and we don't feel like waiting any longer. We need this in full and we need it now, and we need it for every single woman out there.

The concern is that we address this many percentage of the women or we address just a few more percentage of the women, and the ones who are getting left out are the ones who are in that very vulnerable position. They're in much less secure positions: They're not working for a municipality, they're not working for a big hospital. They're already in very vulnerable positions and they're already getting paid too little, and their children are the ones who are feeling it.

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**Mr Winninger:** I'm sure you could also appreciate that if we as a government were in office in March 1990 with a projected surplus in our budget, things might be entirely different.

**Mr Kyle Rae:** I think you would have told the public that you didn't have it. The previous government didn't do that.

**Mr Winninger:** I don't argue that.

**Ms Dianne Poole (Eglinton):** I hadn't intended to bring this up, but, Mr Rae, since you've thrown down the gauntlet, let me refer you to the auditor's report in the fall of 1991 that looked at the deficit that allegedly was left by the Liberals. The auditor very clearly stated that the deficit was left for two reasons. One was a very dramatic downturn in the economy which had not been anticipated and which resulted in social assistance payments skyrocketing. The second reason was some creative doctoring of the books by the NDP: front-end-loading payments, for instance, with the teachers' pension fund, UTDC and all these wonderful types of things. Just to clear that up, to start with.

**Mr Kyle Rae:** I hope every government has got creative auditing. I'm sure the NDP's not the first one to discover that.

**Ms Poole:** This was the Provincial Auditor; this wasn't another party complaining about the government's doctoring of the books.

I'd like to go to the delay of this legislation and the delay of pay equity engendered in this legislation. Mr Malkowski has said, quite rightly, that the previous Liberal government



announced in March 1990 that it would be extending pay equity to an additional 350,000 women by adopting the proportional method in addition to the job-to-job. That is included in this legislation, but as Mr Malkowski stated, for three years nothing has happened. Two and a half of those years, quite frankly, have been an NDP government, so I'm glad he's acknowledging that they are responsible for the delay.

I'd like to go beyond that. We have had group after group come to us, including the Ontario Federation of Labour, the Pay Equity Coalition, the Ontario Coalition for Better Child Care and the Ontario Nurses' Association. Virtually every group that has come before this committee has been extremely critical of the government for delaying the pay equity commitments promised in the 1987 bill for an additional three years.

In fact, I have the Hansard here from the Ontario Nurses' Association presentation. What they say is, "What we see before us in Bill 102 shows that the government has blatantly reneged on its promise to right the historic wrongs in women's wages." This is the line I would like you to pay particular attention to: "The amendments in the proposed bill do not merely delay pay equity; they begin to dismantle hard-fought gains." Obviously, one of the most important of these hard-fought gains was the deadline for the achievement of pay equity in the broader public sector by January 1, 1995, which this bill extends to 1998. There is also the maintenance of pay equity. A number of groups have been extremely critical that this legislation jeopardizes the maintenance of pay equity legislation.

Those are the types of criticisms we've heard, that say that instead of improving this situation—the group of child care workers you've referred to in your comments, Jane, has made gains, yes, but this bill has done it at the expense of the other women in the broader public sector.

What I'd like you to comment on—and you already touched on this when you said, "We're not prepared to wait"—is, have you been lobbying the NDP government since Bill 102 came out in December to ask it to revert to what the 1987 legislation said, as far as having achieved pay equity in the broader public sector by 1995 is concerned? What has been their response?

**Ms Mercer:** I am a member of the Ontario Coalition for Better Child Care and the Metro Toronto Coalition for Better Child Care, and I know that both these groups have been actively lobbying the NDP government since that news came. I personally was not one of the individuals involved in that. We try to spread our lobbying around a little bit. Maybe somebody else can answer that.

**The Chair:** Please come forward and identify yourself.

**Ms Zeenat Janmohamed:** My name is Zeenat Janmohamed. I work for the Metro Toronto Coalition for Better Child Care and I'm an executive member of the Ontario Coalition for Better Child Care. We have just initiated our process of lobbying government members as well as members of the opposition; in fact, we have our first meeting tomorrow morning with Rosario Marchese. So we're quite keen on lobbying everybody who has shown some interest and has shown some commitment to pay equity and ensuring that Bill 168 that was proposed should go forward, with an implementation starting date of January 1, 1993.

**Ms Poole:** I was specifically referring to the original schedule under the legislation passed in 1987, which stated that the broader public sector would achieve pay equity by January 1, 1995.

**Ms Janmohamed:** Quite frankly, Dianne, I don't think that's very realistic. We recognize that and I think you recognize that as well. So we're quite comfortable in supporting a move to have it fully implemented by 1998, and you know that the Ontario coalition has come forward and asked the government to put a cap on the pay equity payouts by 1998.

**Ms Poole:** I'm just surprised to hear that, because that's not what the coalition said yesterday. They were very clear that that was one of the things they felt should be changed in the bill.

**The Chair:** Thank you, Ms Poole. Ms Mercer, Mr Rae, on behalf of this committee I'd like to thank you for taking the time out this morning in giving us your presentation. Thank you.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

**The Chair:** I'd like to call our next presenters from the Canadian Union of Public Employees, Ontario division. Good morning. Just a reminder that you'll be allowed up to an hour for your presentation. The committee would appreciate it if you could keep your remarks slightly briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you each identify yourself for the record and then proceed.

**Mr Jim Woodward:** Mr Chairman, thank you very much. I'd like to introduce the people who are here. We have Nancy Barrett, the women's committee representative for the Windsor CUPE council; Geneva Neale, also a committee representative, for Hamilton CUPE council; we have Jill Oaker, who is the women's committee representative for the Durham regional CUPE council; and Irene Harris, the equal opportunities representative from the CUPE national office. I am Jim Woodward, the legislative assistant for CUPE Ontario.

By way of introduction to our brief, Mr Chairman and members of the committee, the Canadian Union of Public Employees is the largest union in Canada. Half of our members are women, who work in hundreds of different jobs and occupations in all jurisdictions in the broader public sector, including child care, social services, health care, education, public utilities and municipalities, among others. Many of these workers are in female-dominated workplaces.

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Pay equity is a main priority for our union. We have always supported the need for a legislative right to equal pay for work of equal value. We have bargained hundreds of pay equity plans under the current Pay Equity Act. Through the collective pay equity experience of our local union leadership and staff, we know the many flaws, loopholes and complications of the current act, which have caused thousands of our members to be denied full equal-pay-for-work-of-equal-value rights. We have lobbied for amendments to the Pay Equity Act which will extend coverage so that all women are covered under the current legislation as a matter of priority.



Bill 102, An Act to amend the Pay Equity Act, brings good news to the group of women who were left out of the current law, because it extends pay equity rights to them. We urge your committee and the government to support those parts of Bill 102 which extend pay equity rights to women who were not included under the current pay equity legislation and make the rights clearer and stronger. We also urge the deletion of those parts of the bill which take away existing pay equity rights and weaken what we currently have in place.

Based on CUPE pay equity experience, the following are our comments on sections of Bill 102, and various members of the committee will address each part of this.

**Workplaces with less than 10 employees:** These are not included in the current law and have been left out of Bill 102. While this is mostly a problem for women in the private sector, CUPE has had cases where women members have been told they have no pay equity rights because their workplaces have less than 10 employees. Unless there is an argument to show that such a workplace fits the broader public sector schedule in the act, these women have no rights to pay equity. There is no just reason for this. Bill 102 needs to add these workplaces. We support doing this by adding the following to the preamble of the Pay Equity Act:

"Employers are prohibited from discriminating on the basis of gender in the compensation of employees employed in the female job classes in Ontario. All employees employed in female job classes in Ontario shall be entitled to equality in compensation with male job classes."

**Definitions:** One of the strengths of Bill 102 is its inclusion of women who work in all-female workplaces by allowing comparisons to jobs in other public sector workplaces. The Ontario government is giving significant leadership on pay equity and is setting new standards, showing that pay equity is achievable for all women.

**Terminology** is important because the terms used dictate how easily understood, and therefore accessible, the method being used will be. Therefore, we're proposing replacing the term "proxy method" with the words "cross-establishment method," and the words "proxy employer" with the term "comparator organization." We also propose defining the all-female workplace needing to use a comparator organization as "an organization that must make use of the cross-establishment method in order to achieve pay equity."

**Ms Irene Harris:** I'll now address the issue of "crown as employer," which is section 2 of Bill 102. This section adds a section to the Pay Equity Act which represents a serious takeaway of pay equity rights which have been established under the current law.

Ontario pay equity law has recognized that in order to end systemic discrimination in wages, it is necessary to determine the pay equity employer or the employer which is the source of the problem when it comes to determining of wages paid. A pay equity employer controls the wages of workers by limiting the amount of funding which is allocated for wages and at the same time controlling services which are required to be delivered. When a pay equity employer is identified, it is fair to do a pay equity check to see if that employer has different pay equity practices for its male jobs from those practices applied to female-dominated jobs.

The need to establish whether or not there is a pay equity employer who is someone other than the employer noted in a collective agreement has only occurred in a few sectors. For example, at the Kingston-Frontenac Children's Aid Society all of the jobs are female-dominated. Consequently, these women did not have access to pay equity under the law. CUPE searched out an appropriate pay equity employer, using criteria established by the Pay Equity Hearings Tribunal, so that the women could have pay equity. The Pay Equity Hearings Tribunal found that the province of Ontario is the pay equity employer for the women working at the Kingston-Frontenac Children's Aid Society. This gives those women the right to compare to male-dominated jobs in the provincial government.

There are other children's aid societies around the province that likely fit the same situation as Kingston-Frontenac. By agreement of all concerned, including the provincial government, determination of the employer was held in abeyance in several cases involving children's aid societies pending disposition of the Kingston-Frontenac hearing before the Pay Equity Hearings Tribunal. It is unfair and unjust for the government to now decide that it should have the right to delete its direct pay equity responsibilities. This represents a takeaway of existing rights.

Subsection 23(2) of Bill 102 makes the section retroactive to December 1991. We urge you to delete section 2, "Crown as employer," and subsection 23(2) of Bill 102.

We now, in this part, want to address Bill 169, the Public Service Statute Law Amendment Act, which is the companion bill which allows the provincial government to opt out of the obligation to end its part in systemic discrimination when it is determined to be a pay equity employer. Bill 169 also affects current reform of the Crown Employees Collective Bargaining Act, where consultations are taking place. Bill 169 gives the crown absolute power to decide who is a crown employee, and we think that these discussions are better left to the whole issue of sector reform. We therefore urge you to defeat Bill 169 in its entirety.

**Ms Nancy Barrett:** I would like to address the issue of the limitations of maintenance of pay equity. Bill 102 makes two references to putting limits on the maintenance of pay equity. This also represents a major takeaway of existing rights. Employers and bargaining agents bargained pay equity plans and set out how the gender wage gap was to be closed. This has been an important and significant task. Reference to maintenance in the Pay Equity Act and early decisions of the Pay Equity Hearings Tribunal have made it clear that we cannot let the wage gap widen again. Once gender discrimination is identified, it must be eliminated and never reintroduced. Section 6 of Bill 102 would allow cabinet to water down maintenance of pay equity. Subsections 22(1) and (2) allow this to be retroactive. This is a major takeaway of rights. We urge you to delete section 6 and subsections 22(1) and (2) of Bill 102.

The issue of extending pay equity payments until 1998: Section 7 of Bill 102 allows employers in the public sector to take until 1998 to close the wage gap identified in their pay equity plans. This extension is being given as a legislative right and is not related to whether or not the employer can meet the original 1995 deadline.



We now have employers who are refusing to make their pay equity payments promised on January 1 of this year. In many cases public sector employers have completed their pay equity plans ahead of the 1995 requirement. Completing equity increases is especially important to women who are close to retirement. Now women who retire before 1995 lose pay equity increases coming into effect after they retire. Not only are they shortchanged by not having all their pay equity increases; these increases will not be reflected in their pensions.

It also affects women who are being laid off. Incomplete pay equity increases mean receiving lower severance pay and unemployment insurance benefits, which are based on the rates of pay that you are receiving at the time of layoff. These are significant losses to thousands of women.

This amendment unfairly gives a free hand to employers who have not made the effort to complete pay equity adjustments as soon as possible, even when they may be in a financial position to meet the original 1995 completion date. We urge you to delete section 7 of Bill 102.

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**Ms Jill Oaker:** I'm going to speak to proportionate value. We are very supportive of the addition of the right to proportionate value for those women who did not have a male comparator under the current legislation. This will allow many women who did not have pay equity rights to now have access to pay equity. We commend the government for bringing this forward.

We also support the intent to allow employers and unions to work out our own methods for determining proportionate value, thereby allowing different workplaces to do what best meets each situation. Regulation-making ability or proportional methods are unnecessary.

We urge you to delete clause 22(1)(g.1), which allows regulations on proportionate value methods. By deleting this, you will properly leave the choice of proportionate value methods to unions and employers who in turn can use the government's Pay Equity Commission for advice and guidance.

We also need flexibility to allow proportionate value to be done using any number of male jobs. Bill 102 appears to prevent us from using only one male job class by use of its term "representative group of male job classes."

We urge you to amend clause 21.3(1)(a) by referring to "a representative male job class or a representative group of male job classes."

We are also pleased that the law gives employers and unions the flexibility to do proportionate value for all jobs, provided that no one gets less than what the original job-to-job plan provides. This is an important protection of existing rights. However, there is a concern about what happens to those employers who should have completed pay equity plans under the current law but have not yet done so. It is important to make sure that Bill 102 does not create a loophole which allows an employer who is late with his current obligations to revert to a plan under the proportionate value section, where payments do not start until January 1, 1993.

In order to ensure that existing rights are not taken away in this way, we urge you to amend section 21.2 by adding subsection (6) as follows:

"21.2(6) Any employer who has failed to post a pay equity plan and who can achieve pay equity for some or all of its employees in female job classes under the job-to-job method of comparison must do so before using the proportional method and must comply with the schedule for payments found in section 13."

Also, proportionate value payments apply to women who were unfairly left out of the current law, which required payments in the public sector to start in 1990. The government's Bill 168, which was introduced at the end of 1991, required proportionate value payments as of January 1, 1992.

We urge you to amend clause 21.10(1)(b) to read, "in the case of employers in the public sector, effective as of the 1st day of January, 1992, or earlier."

**Ms Geneva Neale:** I'm going to speak on pay equity for all-female workplaces. That's section 7. We are very happy to see the government include the right for women's jobs in all-female workplaces to be checked for gender discrimination in wages by comparing to jobs in other public sector organizations. As we mentioned earlier, this is setting an important example to other provinces and countries which are looking to Ontario for leadership in pay equity for all women.

(1) Earlier, we mentioned that we would like to see the terminology on the "proxy method" part of the bill changed so that the terms better fit the method being applied, and also so that the terms are more easily understood.

(2) We would prefer to have female jobs in the all-female workplace compared to male jobs in the other organization. It would be simpler and easier to "borrow" the male job descriptions and male rates of pay from the comparator organization; proxy employer in the bill. The all-female workplace could then do the job of applying its negotiated gender-neutral comparison system to its female jobs and the borrowed male jobs to determine whether or not there is a wage gap and, if so, the amount. We urge the government to revisit this model as an easier one for the parties to work with and one which is less intrusive into the existing pay equity plans of the comparator organization.

(3) The group-of-jobs approach allows the proxy employer to choose a group of jobs when a similar female job is not available. This is too cumbersome and leaves too much to the discretion of the comparator organization. Therefore, we urge you to delete subsections 21.15(6) and 21.17(4) to remove this reference to group of jobs.

(4) Subsection 21.17(2) requires the all-female workplace to provide information with its request for information. There are two unnecessary pieces of information required by this section. The first is (c), which requires the organization chart showing reporting relationships. We know that many smaller organizations may not have such a chart, and they should not be required to develop one in order to meet their pay equity obligations.

The second problem is with (f), which requires corporate resolutions and documents verifying the request. This should not be necessary, especially since we are dealing with public sector organizations with a legislative requirement to request pay equity information from another organization. Therefore, we urge you to delete clauses 21.17(2)(c) and (f).

(5) Subsections 21.17(7) to 21.17(11) deal with confidentiality of information. We remind you that in all cases,



according to the legislation, both organizations will be part of the public sector, operating on public funds. In many cases, the information being given will already be known. For example, jobs in hospitals, school boards, municipalities and social service agencies usually have common positions with salaries which are known through collective agreements or public minutes of board and council meetings.

Given this, we are concerned about the need expressed by Bill 102 to treat information with so much secrecy. Individuals involved in the bargaining of the pay equity plan have the potential to be fined \$5,000 if the information is used for purposes other than pay equity; employers and unions are open to fines of \$50,000. This threat of fines which can come as a result of being involved in the pay equity process will discourage committees from securing information through the channels set out in the legislation and using other means of accessing the information. Information used to bargain other plans in the public sector did not have this confidentiality of information required even when we had to use information on non-union job descriptions to bargain pay equity plans. This whole notion of confidentiality of information is unnecessary and troublesome. Therefore, we urge you to delete subsections 21.17(1) to 21.17(7).

(6) Pay equity payments will not start for women in all-female workplaces until January 1, 1994. These women should rightfully have been included in the first round and had their payments start in 1990 along with other public sector women. As well, these women must have payments completed in five years. Therefore, we urge you to change subsection 21.22(1) to January 1, 1993. We further urge you to amend Bill 102 to allow pay equity payments to be completed in five years.

1030

**Ms Oaker:** I'm going to speak to access to the Pay Equity Hearings Tribunal. There are three sections of Bill 102 which have the potential to deny rights as a result of a dispute going before the tribunal.

(1) One change would bind parties to any agreement settling a dispute which is to be heard by the tribunal. The current legislation respects the parties' rights to decide whether or not such agreements are made subject to ratification or subject to other needs which may exist because of the nature of the dispute. Consequently, subsection 25.1(2) is unnecessary and should be deleted. If it is not deleted, it is absolutely essential that the legislation include a requirement that the parties cannot waive any rights or disregard obligations of the act through such a settlement.

(2) Under the current law, parties to a tribunal hearing can be the employer, complainant and/or union. We also support that the pay equity office have access to the tribunal. This would be helpful to the pay equity process when the act is not being followed. We urge you to delete "any other persons entitled by law to be parties" and replace subsection 20(1), which amends subsection 32(1), with "(d) the pay equity office, where a hearing is held before the tribunal."

(3) The Pay Equity Act establishes minimum rights. Unions and employers together, or employers acting on their own for non-union women, need to make decisions in the context of the law which has established some pay equity rights. The act needs to reinforce the right of employers and

unions to negotiate pay equity settlements while reinforcing the requirement to follow minimum standards.

We urge you to amend Bill 102 by adding the following subsections to section 34 of the Pay Equity Act:

"(5) An order of a review officer is not revoked except by a decision of the tribunal or an agreement by the parties relating to the subject of the order.

"(6) No employer, employee or group of employees or the bargaining agent may waive any rights or disregard any obligations under this act.

"(7) The pay equity office can request a hearing before the hearings tribunal with respect to a contravention of subsection 34(6)."

**Ms Irene Harris:** We want to conclude by saying that Bill 102 allows many important improvements to the Pay Equity Act. The government is taking needed, overdue steps to give all public sector women access to pay equity rights. However, at the same time, the government has proposed taking away pay equity rights by removing its responsibility as a pay equity employer and by delaying pay equity wages which were promised to be paid by 1995.

It is the takeaways in Bill 102 which cloud our freedom to celebrate the important gains women are making because of this government's positive initiatives. We urge the government committee to respect and keep existing rights and to move ahead quickly and bring into law its positive changes. Then, together, we can truly celebrate the commitment this government has made to bring about equality for women.

With that, we're ready to take any questions you've got.

**The Chair:** Thank you. Each caucus will have about 10 minutes.

**Mr Arnott:** I won't have 10 minutes for my questions, but I want to thank you very much for coming in this morning to express your view on this issue. You've offered us a perspective, I think, that the committee has not heard exactly to date, so we certainly appreciate that.

I have a couple of questions. The first one is that in your introduction you state, "Pay equity is a main priority for our union," and you rank it according to a series of priorities you must have. I assume that the preservation of existing jobs within your workplace is your top priority, is it not, at this point in time?

**Ms Irene Harris:** That is a major priority, pay equity is a major priority, employment equity is a major priority. All of these are things that are important to our members. I think the preservation of jobs is important and how jobs are preserved is important.

If you're saying, "Would you like to talk about trading off of priorities?" we're not prepared to do that, if that's where the question's going. I think the preservation of jobs is critical. Employers have to have some accountability about how they're using funds, especially funding that they get through taxpayers or from the government directly. There's got to be some accountability about how that money's used and therefore how jobs are preserved or not preserved or how pay equity obligations are met or not met.

**Mr Arnott:** That's exactly where I'm going, because I'm afraid that your two priorities may be contradictory. If you assume that the component of government spending which



goes to salaries and wages for employees in the Ontario public service and broader public sector is going to remain constant, which I expect by and large it will over the next couple of years, if pay equity is brought into place, jobs will be lost. That's my fear.

**Ms Irene Harris:** Could I remind you of something? One thing that's interesting with the Pay Equity Act is that employers are required to spend 1% of payroll a year. We have a lot of employers at pay equity bargaining tables whining because they can't speed up the payments. We go in and say: "Let's close the gap in a year or two. Let's not wait the five years until 1995."

A lot of employers we deal with in good faith did that. They said that's right. Often the pay equity payments often don't come to more than 5% of payroll and they found a way to do it. It might mean they didn't buy the brand-new photocopier or they waited for some other equipment they bought or they didn't buy a new building, in order to meet other commitments.

We know that in every workplace, employers are balancing out how the money is spent, and our sense is that the pay equity payments have not been that onerous. They haven't been like 100% of equivalent of payroll. The act only requires 1% of payroll. We don't understand why some employers can, in good faith, pay it out before the 1995 deadline and others can't. We're saying you should keep in mind that it is a small portion of the overall budget. We don't buy it when employers say, "When you make these pay equity payments, it's going to break us."

We've had a lot of employers who tried—some were doing layoffs. I can think of a hospital that was doing some layoffs and said at the time that it was the pay equity payments and the health tax that it now had to pay. So we were going to bring forward a complaint to the hearings tribunal to prove that they were reducing wages, in effect, by blaming the layoffs on pay equity payments. What we found when we scratched beneath the surface was that pay equity payments and the health tax had nothing to do with the reason for the layoffs. What they were doing was bringing in some outside management firms contracting out work.

I think you can't just make these sorts of bald generalizations that if we somehow pay women equity, we're going end up losing all kinds of jobs. It's not fair or reasonable, I think, to say that pay equity is the cause of that problem.

**Mr Arnott:** I believe it's true. I think if you want to look at all employers and say all employers can afford it, you're doing the same overgeneralization you're suggesting I'm doing. Business bankruptcies have gone up significantly in the last couple of years. You can see from those figures that some employers cannot afford to stay in business and they've gone out of business.

**Ms Irene Harris:** No. In the private sector, of course, the law says they pay 1% of payroll and it goes on until the pay equity payments are completed. The private sector didn't have this 1995 deadline. But I think in the broader public sector it's a fair question to ask, why is it that some municipality school boards and hospitals have paid it out in a reasonable time and some have been able to say, "Okay, here's how I'm going to measure it out in 1995," and there are those

who are obstructionist enough to say: "I don't want to hear about it. I'm only going to pay the little wee bit that I'm required, 1% of payroll, that's it. Come see me in 1995?" Now the law's going to say, "As of right, no questions asked, go to 1998."

What we're saying is that we need some accountability from those employers. Let's take a look. Let's open the books and say, is it true that by 1995 it's going to break the bank or break the municipality to the point where it can't cope? Why didn't the law say something to the effect of, "They've got to show that in fact they can't meet these requirements, and why could they not meet them when others could?"

I just think it was unfair to say everyone can drag it out until 1998, because the ones dragging it out to 1998 are the ones who obviously didn't make an effort to stage the payments out in a way that it could be made in a reasonable amount of time by 1995.

**Mr Arnott:** You mentioned municipalities. Some municipalities, certainly in the riding I'm privileged to represent, are concerned about municipal property taxes and wanting to keep them as low as possible for a variety of reasons. That pressure that's been brought to bear on them may be, to some extent, governing their actions.

Switching to another issue that you've raised, workplaces with less than 10 employees: You would like to see the coverage extended to those workplaces.

**Ms Irene Harris:** Yes.

**Mr Arnott:** How many Ontario residents pay dues to your union?

**Ms Irene Harris:** Nationally we have about 450,000 members. We have about 225,000 members in Ontario.

1040

**Mr Arnott:** You state in that portion of your presentation, "CUPE has had cases where women members have been told that they have no pay equity rights because their workplaces have less than 10 employees." So you do represent some employees in small private sector establishments.

**Ms Irene Harris:** Yes. We have some small private sectors. We don't have very many, mind you.

**Mr Arnott:** Do you know how many?

**Ms Irene Harris:** I've maybe come across 10. What happens is that we've had, say, a really small nursing home or an art gallery or something where the employer will say: "Oh, I don't have to do anything because I did a head count. I have less than 10 employees, so I'm off that hook."

Fortunately, the current schedules of the act make it pretty clear. It's pretty inclusive in terms of the broader public sector, because at the time the Liberals put in the same appendix we had under the wage control legislation, so it's pretty inclusive. But if you can't find some way to say they fit those schedules, you might have some small private sector—semi-public-service sector oriented but it doesn't meet the schedules. If they have less than 10, then the answer to them is, "You're just not covered in any way." That employer is off the hook. In a sense, pay equity doesn't apply to him.

**Mr Arnott:** Or her.



**Ms Irene Harris:** Yes. Very few hers, unfortunately. Maybe we wouldn't have the problem if there were more hers in that situation.

But what happens is, the women say: "Why is that? Why does this apply to everybody else? What's so magical about under-10s? What is it that's there that they should be let off that hook?" We're saying they shouldn't be.

The other option we had in discussing internally in CUPE is that we also don't understand: Where you have a legitimate private sector group that's under 10, I think we could also be saying, "They should have to sit down and bargain a pay equity plan with us," and do that proactive approach. We understand that in such a small situation that might be a little bit of overdoing it, so this kind of general thing in the preamble would give those women a right to say to the employer, "Let's check to see if we've got equal wages here," or if there's a question about it, they have some ability to file a complaint.

I think you just need it for the few employers that still haven't recognized it's 1993 and it's time for pay equity rights for all women. I think a lot of employers are going ahead and doing it. A lot of our smaller ones that were semi-private sector said, "Let's just bargain a plan and be done with it," but there are the few who say: "I don't like pay equity. I don't want to do it, and unless the law says I have to, I'm not doing it." We're saying just put something in the preamble that allows a complaint where it's obvious that kind of discrimination is at play.

**The Chair:** Thank you, Mr Arnott. Mr Winninger, then Mr Lessard and then Ms Murdock.

**Mr Winninger:** I'll defer to my colleague.

**Mr Wayne Lessard (Windsor-Walkerville):** I want to thank you for your presentation. I think it's always helpful for committee members to have some specific suggestions and recommendations for change, so we appreciate that.

In the presentation you refer to the Kingston-Frontenac case and you mention that there are children's aid societies around the province that might fall into that same situation, and it might go beyond children's aid societies to other types of government agencies as well. I wonder if you have any idea what numbers we might be looking at of people who may fit into that situation.

**Ms Irene Harris:** Sure, I'm happy to. Do you know that in the children's aid societies, we were told from Community and Social Services, and our figures show it, there's like 4,000 employees? That's what we're talking about in children's aid societies—not a very big group.

What we told ministers in response to the bill is that it's our sense that when you're determining whether or not the government is a pay equity employer, or a municipality or whatever, the Pay Equity Hearings Tribunal put some very strong criteria. It's really hard to meet the tests to show that someone else is a pay equity employer.

For example, in a lot of municipalities we've been able to show that they're the pay equity employer for libraries, but at the tribunal we lost a case. In one case they said, "Not strong enough." I disagreed with the decision, but we lost it.

With the children's aid society, the facts were so clear that the government is the pay equity employer. I don't think they

are for other purposes, but for that purpose it was clear that they are, so the tribunal said, "Okay, you pass the test on this one," so we won that decision.

It's our sense that in our jurisdiction none of the others fit. Children's aid societies and libraries is it, because the criteria has laid out are so strict the tribunal, and it makes it so hard for you to prove that someone else is a pay equity employer. It's our sense that if the government had given this pay equity with the crown as employer for children's aid societies, then for our union this section is not a problem, because we don't think we can fit it for anybody else, and we think it's really unfair. This retro-1991 date—when the government introduced Bill 168, it said: "You've got Kingston in the door. Now we're closing the door." I think that was unreasonable and unfortunate given the small number of people who were there. We're not sure that in the end the cost is going to be that onerous. So for us, once the children's aid societies are included, I don't think we have any arguments for any other pay equity employers.

**Mr Lessard:** I'm going to suggest to you that one of the reasons for unions and others taking that approach is that the previous Liberal legislation and the job-to-job comparisons didn't permit pay equity to a lot of women. I'm going to further suggest, now that the options are expanded with proxy and proportional value, there is that extension of pay equity to more women. So they wouldn't have to go through the same sort of test as in Kingston-Frontenac, expend the time, the funds and the energy and take the chance that they may lose. Would you agree with that?

**Ms Irene Harris:** No. I think there's a difference. The difference is that the children's aid society workers were able to show that they have a pay equity employer under the current law. Weak as it is, they're under it and they would get their money between 1990 and 1995. Hopefully, you'll get rid of that 1998 date and it will still be 1995. They have a pay equity employer under the current law within that time frame.

I don't think it's good enough to say to them, "Don't worry about it; we're going to let you come under proxy; your money's not going to start till 1994, and we're going to dole it out till God knows when it's going to be completed," and say they got the same thing. What you have done is taken away their better access under the current law and put them into this other program, which is really later money stretched out over a longer period of time.

I would like to see the people in the all-female workplaces have the same 1990 to 1995 date, be under the current law and all that kind of thing, but I think we've agreed they aren't. It's been slow to bring them on stream, but they're in a different category because they don't fit a pay equity employer test. When you look for some social service agencies to find if there is another pay equity employer other than their own, there isn't. They don't meet the tribunal's criteria. They could never win a case. They are in a different category, as are the children's aid society workers.

**Ms Sharon Murdock (Sudbury):** Thank you for a really good presentation. I just have a couple of technical questions, mostly for clarification, because they have been made by others. One is on page 8, under "Pay Equity for All-Female

Workplaces.” It’s a point that has been made by other groups, but I’ve never asked this question before, so we’ll see.

**Duties and functions:** I know you’ve used the terminology “job descriptions” throughout some of the points you’ve made, but when you’re applying to a proxy or cross-establishment organization, you’d be listing the duties and functions of the job you would like it to be compared to. Correct?

**Ms Irene Harris:** Yes.

**Ms Murdock:** I know at the behest of the Equal Pay Coalition, the specific female job classification was used in the legislation, and I notice that you’re asking for male to be used rather than female. My question is, why would you bother with either, with designating the classification at all, if you’re going on job functions? Why does it have to be male or female within the proxy organization?

**Ms Irene Harris:** I think partly because we’ve argued that when you talk to the women in the all-female workplace about what is pay equity, they understand it the way we all do: “I’m in a female job. I get compared to a male-dominated job to check to see if there’s a wage gap.” The notion of value-determining comparators with the male job class fits the International Labour Organization convention and all that kind of stuff. Pay equity for them means the same thing as it does for other women.

I think what’s good about Bill 102 is that you had talked about saying, “Okay, you’re going to find the female job in the other workplace that’s similar,” but in terms of the money that comes out, it’s whatever their male comparator is paid. In a sense, you’re just doing a different route to the male comparator than what we’re suggesting here. We think this is a little more practical. The difficulty is that we’re going to be dependent on that other pay equity plan, what that similar female got and how it was determined. We might determine a different way of doing the comparator for the all female workplace.

I think both models are great, because they get us to the male comparator rate of pay and that’s what it’s all about. We think this is just less intrusive into the proxy’s pay equity plan.

1050

**Ms Murdock:** The other question I have, if I have time—I’ve been admonished by the Chair that I don’t check with him often enough—is under section 21.2 with the definition of—using the job-to-job before you use the proportional method, and the employer being required to do so. I know that on page 6 you gave your definition, or what you would like to see added as a subsection (6), which might prove interesting since there already is one there. But I would like you to look if you have the act—

**Ms Irene Harris:** I don’t, no, but I have it memorized.

**Ms Murdock:** Look at the definition under subsection 1.

**Ms Irene Harris:** You’re at 21.2(1)?

**Ms Murdock:** Yes.

**Ms Irene Harris:** Okay.

**Ms Murdock:** Since the language is already there, I’m just wondering if what you want could be achieved, because we don’t disagree with you that the employer should be going through job-to-job before you start utilizing other methods, unless there’s no other way to utilize that.

One of the suggestions we made yesterday was that following the comma after “job-to-job method of comparison,” we would put “then the employer shall use the proportional.” Would that achieve the same thing for you that you’re asking on page 6 of your submission?

**Ms Irene Harris:** It might. Yes, that might do it, because we want to just make sure that in some way they have to do job-to-job if they can. If the legal advice is that would do it, that would be fine with us.

**Ms Murdock:** Actually, I haven’t checked with our legal counsel. We’re not disagreeing with the concept. Mind you, I read 21.2 as saying that. I see it as saying that, but obviously when you have a number of groups coming before you, their interpretation saying it doesn’t say that or that it could be interpreted differently, I don’t see anything—if there’s a way of making it clearer—

**Ms Irene Harris:** Yes, we had the same concerns. When we first read this we thought that did, and actually you put stuff in proportionate value that we are really cheering about because we think our only concern was: Make sure people do what they have to in proportionate as an addition for those women who weren’t covered. So there’s a lot of good things here. It was pointed out to us, too, that there could be this loophole where an employer would say, “Well, I’m going to jump to proportionate value and leave the other stuff aside.”

**Ms Poole:** First of all, I really want to commend you for your brief. It is not only comprehensive, but you’ve really make it very balanced without some of the partisan comments we sometimes get into and I think that’s important. You’ve tried to be very objective about what you like and what you don’t like about the legislation.

It seems to me there are three major ways in which you say the legislation takes away. One is the reference to the fact that the crown has given itself a right that no other pay equity employer has, which is to have the sole discretion as to whether it is the employer. The second was the watering down of the maintenance of pay equity, which I think you described quite thoroughly. The third, of course, is the delay of the timetable for the public service by the three years from the original 1987 legislation.

I think you’ve covered those extremely well, but the question I have for you relates to your discussion on page 9 about proxy and some difficulties you have with the way proxy has been determined. The government said on Monday when it appeared before the committee—the Minister of Labour said they had two models. The first model for proxy was seen to be unacceptable or inadequate, so they went to the second model.

But it appears to me from what I’ve heard so far—and I don’t know whether you could confirm this—there was fairly broad consultation on the first model, but the second model came as a surprise where female jobs were being compared to female jobs as opposed to the traditional pay equity approach of comparing female jobs to male jobs. I’m wondering about that consultation. Did you have an opportunity to—

**Ms Irene Harris:** Oh, I think there was a lot of consultation, as I recall, because I remember the first model that was floated: We’d only get what the female comparator got, not what her male comparator was paid. Actually at the time the ministers were Tony Silipo for Management Board and



Marion Boyd from Comsoc with Bob Mackenzie. I think to give Silipo and Marion Boyd extreme credit, we told them this was a denial—by giving the women just what their female comparator got and not the male comparator rate. It's this notion of not being compared to a male comparator which was really disarming. I think to their credit they delayed a cabinet submission in order to have fuller consultation with unions and women's groups and some employers to say, "How are we going to do this?"

I think the model in Bill 102 was probably the compromise position and does get us to the male comparator rate; so I think in that sense the government has done very well. But I guess we're saying, "Let's have one more crack at trying to get a model we prefer," which is to borrow male job descriptions and rates of pay, bring them into the all-female workplace and use them to do your plan, so that you're less intruding into how the other plan worked out in terms of the male/female comparator.

**Ms Poole:** It seems to be a more direct approach. The other may end up accomplishing the same thing eventually, but you'd have to go through the female route to begin with.

**Ms Irene Harris:** I think they both get you to the same spot at the end of the day, but we have a lot of plans that we've bargained where outside groups would be borrowing the information from our plans, and then we've got to tell them, "Well, in this case we bargained that this female has this male comparator." That proxy organization might do it differently, given a different set of circumstances. We think the way we're suggesting is a little easier on everybody. But I wouldn't want to see the end goal changed based on either model.

**Ms Poole:** Well, I'll just thank you once again. You've shown really a very broad range of knowledge on this particular subject and you've been very helpful to our committee.

**Ms Irene Harris:** Thank you.

**The Chair:** Thank you, Ms Poole. Ms Caplan.

**Mrs Caplan:** Yes, thank you. I'd like to take the couple of minutes I have to talk a little bit about 169. I think you're quite correct in your very excellent brief when you point out that 169 has very little to do with pay equity and a lot to do with collective bargaining, particularly with the provincial government and the declaration of employee status. I share your cynicism and I said so, by the way, during second reading in the Legislature when I pointed out the timing of the bill and the alternative ways that it could have happened.

I've been on the record before and wanted to say that it was never contemplated in the original pay equity policy that you would ever have province-wide wage rates or collective bargaining. I think that was clear to everyone and that was never the intent. But I believe you could have dealt with the definition for the purpose of pay equity in Bill 102 if that was really the government's intent. Do you agree with that?

**Ms Irene Harris:** I agree with that but I wouldn't want to see that definition in Bill 102 because I know the Liberals were going to put in a definition of "employer." They floated that idea with us and we pleaded not to do that. You know, if it's not broken, don't try to fix it.

**Mrs Caplan:** But I know there was concern about the definition of "employer," but rather than bringing in something

which goes far beyond pay equity in a separate piece of legislation which I think is—you make the point in your brief that it's going to limit debate on the implications in Bill 169, quite legitimately. I think that's a legitimate concern of yours. Since the original Bill 168 was tabled at the same time as 169 and then a year later when Bill 102 was tabled, if the government was concerned about the definition of "employer" for the purposes of pay equity it could have been included in the definitions section and then you could have had a proper debate, especially now since we're looking at reforms of the Crown Employees Collective Bargaining Act which is coming down. My question is: Were you involved in the consultations around that issue, unrelated to pay equity, from your knowledge?

1100

**Ms Irene Harris:** No, as I understood it at the time, because of this crown-as-employer item coming into Bill 168, we were working with the government hoping to at least settle the children's aid societies, because in our sense, that was the last group that could really meet the tests. So that section for our union was not onerous at that point if in fact we'd reached a settlement. We were advised that Bill 169 was being brought in because they had to cover those parts. How that affected Bill 168 affected the crown employees act; therefore, they would be bringing something in to show that.

In the meantime, our union got involved in the consultations on the crown employees bargaining act—actually it was our legal counsel, another department of CUPE—and we got talking about why Bill 169 was sitting there when it's so intrusive into these other consultations, and that's why we're agreeing that you should get rid of Bill 169 for those reasons. Also, we don't want this crown-as-employer section in the Pay Equity Act. If that goes, then Bill 169 really has total lack of relevance.

**Mrs Caplan:** I just have one further question. We've heard from others that it would be preferable to deal with the issue of employer for the purposes of pay equity within Bill 102 and to deal with the definition of "crown employee" within the collective bargaining or Public Service Act as part of the reforms for CECBA. What I've heard you say is that you agree with that.

I'd like to move just for a minute to Bill 102 because what we've heard from a number of people is that this bill penalizes the good employers who negotiated in good faith and made the payouts. Whether they were public sector or private sector, you had a number of good employers who sat down and negotiated with you. So you have the government rewarding bad behaviour and interfering in that kind of good-faith collective bargaining. Do you feel that this a result of Bill 102 that perhaps the government hasn't contemplated?

**Ms Irene Harris:** I'm not sure, because we didn't have any consultation on that. We found out about the 1998 extension when the bill was introduced, and we had a lot of questions about it because I guess that means we don't have information that employers might have given to the government. Maybe there's some real concern; maybe there are some real problems.

For example, we know that in some female-dominated workplaces, like the hospital sector, they have not been able to make the payments as fast as municipalities or school



boards, where there aren't as many jobs competing for the pay equity fund. Maybe there is a need to revisit some of that stuff; we don't know. But I think we need to understand a little better why it is necessary to go beyond 1995. What are the figures? What are the outstanding amounts in different plans? We're concerned that it will change from workplace to workplace. If some of them can show that they owe 50% of payroll in 1995, then maybe it's something that we've got to look at.

**Mrs Caplan:** Are you aware of any of those fiscal analyses? We haven't seen them either. Have you seen any of them?

**Ms Irene Harris:** No, we haven't seen them. Could I just make one correction: We do not support a definition of "employer" in Bill 102.

**The Chair:** Ms Harris, Mr Woodward, Ms Barrett, Ms Neale and Ms Oaker, on behalf of this committee, I'd like to thank you for taking the time out this morning and coming and giving us your presentation.

#### PAY EQUITY COMMISSION

**The Chair:** I'd like to call forward our next presenters, the Pay Equity Commission. Good morning. Just a reminder, you'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks slightly briefer than that to allow time for comments and questions from each of the caucuses. As soon as you're comfortable, could you each identify yourself for the record and then proceed.

**Ms Brigid O'Reilly:** My name's Brigid O'Reilly. I'm the Pay Equity Commissioner and I'm here with my colleagues Judith Killoran, legal counsel to the pay equity office, and Murray Lapp, director of the review services branch at the Pay Equity Commission.

The Pay Equity Commission welcomes this opportunity to speak to the standing committee on administration of justice on Bill 102, An Act to amend the Pay Equity Act.

Our presentation is in three parts. Part one looks at how the Pay Equity Act is working now and comments on the overall purpose of Bill 102. Then my colleagues Judith Killoran and Murray Lapp will outline proposals to make the act work better and will comment on the issue of maintaining pay equity and a proposed change on this issue in Bill 102.

At the Pay Equity Commission we have been working with the current Pay Equity Act since 1988, when the commission was formed. We have firsthand experience with employers, employees and unions in their efforts to achieve pay equity. We know what the problems are and we think we know what many of the solutions are. Our experience has informed the proposals you have before you in Bill 102 for proportional value and proxy approaches to pay equity.

The Pay Equity Act should ensure that work traditionally done by women—caring work, caring for our children, caring for our parents, clerical work, sales and service work—is paid the same as work of equal value done by men. The act seeks to narrow the wage gap between women's work and men's work. Put simply, it requires employers in Ontario to pay their employees for the value of the work done, regardless of whether women or men principally do it.

The commission was established by the act. It's divided into two parts: the pay equity office and the Pay Equity Hearings Tribunal. In turn, the pay equity office has a number of branches. The policy and research branch is responsible for developing policy within the office and for conducting research on pay equity issues. This branch was responsible for the 1989 report that showed how proportional value and proxy approaches to pay equity could expand the benefits of the act to women in predominantly female sectors of the economy.

A second branch is the information and educational services branch. Since 1988 this branch has worked very hard providing information on pay equity to a variety of groups affected by the legislation, essentially the same groups we cited earlier: employers, employees and unions.

We have a toll-free telephone hotline that handled 29,000 calls last year alone, and that's about an average for each of the years since the commission started. Since our startup in 1988, we've also run 4,000 seminars, workshops and consultations on pay equity and have reached almost 70,000 participants face-to-face in these, and we've informed thousands of other employers and employees through our newsletters, our training video, our advertising and our print materials.

The review services branch at the commission investigates and mediates complaints or objections that arise from those who are negotiating a plan or affected by a plan. Once a complaint is made, the review officer investigates the issues involved and attempts to help the parties reach a settlement.

We stress that pay equity is a workplace-centred, self-managed process and has a high rate of settlement at review. Of almost 3,400 cases that have come to review since 1989, 85% have been settled. If a settlement cannot be reached, the review officer can issue an order which outlines a resolution to the issue confronting the parties and gives the reason behind the decision. Any party to an order may request a hearing at the Pay Equity Hearings Tribunal.

As we mentioned earlier, the policy and research branch was responsible for producing the report on the achievement of pay equity in sectors of the economy which are predominantly female. The commission was given the mandate to prepare this report in the original legislation. That 1989 report recommended that the act be amended to include both proportional value and proxy comparisons.

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As was pointed out by the Deputy Minister of Labour in these hearings a couple of days ago, proportional value comparisons have by and large been readily accepted by the public and private sectors as a way of achieving pay equity. Employers large and small in both the public and private sectors have told us at the pay equity office that they welcome the addition of this approach, proportional value, to pay equity. The proxy comparison was also proposed in that 1989 report and also has received widespread support in the broader public sector. We at the commission are very supportive of Bill 102, which includes these two methods of comparing jobs so that pay equity can be achieved in more of Ontario's workplaces.

The Pay Equity Act is not perfect, as we have said. At the commission we've had a number of recommended changes to the act since 1989, once we saw it start to work,



and we're pleased to report that most of these changes are found in Bill 102.

I know that all of my colleagues at the Pay Equity Commission, an extremely hardworking and dedicated group, welcome many of the changes that Bill 102 is proposing and we look forward to working with the new act so that the benefits of pay equity can extend to more Ontario women. However, we must say that women have waited too long for these changes and we share the frustration with the delays in implementing proportional value and proxy approaches to pay equity.

There are two areas of Bill 102 in which we see the need for change. One relates to review officers' orders and the other to the maintenance of pay equity.

**Ms Judith Killoran:** As was mentioned earlier, I'm Judith Killoran and I act as legal counsel to the pay equity office.

I'd like to comment on our proposals relating to review officers' orders. A number of organizations that have preceded us have supported these proposed changes in their briefs to this committee, and we would hope that their support for the changes will strengthen our case.

Subsection 24(5) of the present act states that "Where an employer or a bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the hearings tribunal." Subsection 25(1) says, "The tribunal shall hold a hearing where such a reference is made."

In three separate cases, the tribunal has not been able to hold a hearing under a subsection 24(5) reference. In the third case, the pay equity office sought standing as an applicant in a hearing before the Pay Equity Hearings Tribunal but was denied. The effect of this finding has been that orders of review officers are enforceable only when one of the workplace parties pursues enforcement of an order.

There are circumstances when this is extremely difficult. For example, some applicants or women seeking their pay equity rights request anonymity. Often they fear reprisals if they pursue their rights. Unless the pay equity office can take the order to the tribunal on behalf of the anonymous employee, the individual cannot seek the enforcement of the order and of her pay equity rights. For the anonymous complainant, the pay equity office needs standing at the tribunal.

Another example is those employers who will not fulfil their pay equity obligations unless ordered to do so. An employer can easily ignore an order once she or he realizes that the only way the order will be enforced is to have an individual employee apply to the tribunal for enforcement. As with the first example, fear of reprisal will deter the individual from taking her employer to the tribunal.

Further, some employers will not fulfil their pay equity obligations, will be ordered to do so and will ignore the order because they know that the individual employee does not have the resources to proceed to the tribunal to seek enforcement of the order. It has been argued that the user's guide to the tribunal and the assistance of the pay equity advocacy and legal services clinic, which is referred to as PEALS, are adequate aids to the individual woman seeking enforcement of an order.

The evidence runs counter to the argument. Even with a user's guide, appearing alone before a tribunal can be daunting,

and not many individuals have chosen to do so. PEALS is doing an excellent job of representing women, but it does have limited resources. It probably cannot take all the individual cases that have arisen or will arise.

Another circumstance which causes problems is when both parties to an order neither comply with it nor contest it, with the effect of contracting out of the act. In each of the above cases, for example, where a potential applicant seeks anonymity or fears reprisal for seeking to enforce an order, or does not have the resources or easy access to PEALS to help in applying to the tribunal, that applicant could be assisted by the pay equity office if it had standing at the tribunal and could enforce its orders. So too the office could enforce an order when parties neither contest it nor comply with it.

Overall, individual women, most of whom are unrepresented by a union, would be better able to exercise their rights under the act. Furthermore, greater cooperation between parties who are negotiating pay equity would result if the parties know that the pay equity office can proceed to the tribunal as an applicant for enforcement of an order. A section in the act which allows the office to seek to enforce an order would be as much of a deterrent to non-compliance as the exercise of the power itself.

It has been suggested that with such a section, the pay equity office would proceed to the tribunal in a large number of cases. However, in the past four years, there have only been three cases concerned with the enforcement of orders. We would restrict our participation in future to those circumstances.

The pay equity office proposes that subsection 32(1) be amended to read:

"(d) The pay equity office, where a hearing is held before a tribunal."

In its decision Mississauga Hydro-Electric Commission, the Pay Equity Hearings Tribunal found that review officers' orders were not binding unless by a decision of the tribunal. The pay equity office believes that orders issued by review officers should not be revoked, except in two particular circumstances. In the first circumstance, one of the parties applies to the tribunal, and a decision is rendered that could revoke an order. In the second circumstance, the parties agree to a settlement of the issue which may differ from the order. Such a settlement must comply with a further subsection, which I will discuss.

The pay equity office proposes that section 34 of the act be amended with this subsection:

"(5) An order of a review officer is not revoked, except by a decision of the tribunal or an agreement by the parties relating to the subject of the order."

We refer again to the Mississauga Hydro-Electric Commission decision, which stated that the act was voluntarist and implied that parties are free to fashion settlements which meet with the parties' approval, but do not meet the requirements of the act.

The pay equity office believes that there should be a section which deters parties from agreements which do not comply with the act and, in effect, makes a strong statement to parties that they cannot contract out of the act. Such a section would send the message that there's no advantage to ignoring a review officer's order and to agreeing to a settlement at the



tribunal or elsewhere that does not meet the minimal standards set by the act.

The pay equity office proposes that section 34 be further amended by adding this subsection:

“(6) No employer, employee or groups of employees or the bargaining agent may waive any rights or disregard any obligations under this act.”

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The office proposes that section 34 be further amended by adding this subsection:

“(7) The pay equity office can request a hearing before the hearings tribunal with respect to a contravention of subsection 34(6).”

With this proposal, the office would have standing as an applicant in circumstances where agreements are made which seek to evade the requirements of the act. The office would have an opportunity to present its case, but the tribunal would make the final determination. This section would provide an effective enforcement mechanism for subsection 34(6) and would deter parties who consider contracting out of the act.

**Mr Murray Lapp:** As was mentioned earlier, my name is Murray Lapp. I'm the director of review services at the pay equity office.

I'd like to address section 6 of the bill, which amends section 8 of the act by adding a new subsection (5). This is on page 3 of the bill, and the section is again reflected in subsections 21(1) and 21(2) of the bill.

This amendment allows for a regulation to be written which would limit the maintenance of pay equity by employers. In the commission's view, there is no need for such a regulation, and any limitation on maintaining pay equity will serve to undercut the achievement of the basic principle upon which the act is founded.

The act was, as you know, passed so that the portion of the wage gap between the earnings of males and females, which is the result of systemic discrimination, could be closed. The act's core requirement is to establish and maintain pay equity, as set out in section 7. If the requirement to maintain pay equity had not been provided for, the achievement of pay equity would truly have only been a one-shot deal. In other words, the extent of individual inequities would have been identified and addressed, but the same forces which had generated the discrimination would have been allowed to come back into play and re-establish the wage gap. It's difficult to imagine that it was the Legislature's intent to allow systemic discrimination in the setting of wages to re-emerge.

Our comments to you on this bill have, in other respects, been contained to advice about the act's administration and to our ability as an agency to give effect to the act and transform its objectives into reality. In doing this, we are committed to the achievement of the principles which give the act its purpose.

It's for this reason that we are highlighting the impact of the proposed subsection 8(5). Simply put, if this section of the bill is passed, the gains made in addressing pay inequity could be undone; in a few years' time, the Legislature may need to consider another pay equity act in order to recoup the lost ground that this section has the capacity to bring about.

This section only calls for "limitations," not for the erasure of maintenance altogether. "Limitations," however, are

matters of degree, when the issue of established rights is an absolute. You cannot entitle someone to a portion of a right. A year ago, in January 1992, the Court of Queen's Bench of Manitoba delivered a judgement that a limiting provision in Manitoba's Pay Equity Act contravened the equality provisions of the Canadian Charter of Rights and Freedoms. The limiting provision related to the capping of pay equity costs. The decision said that the capping of costs was unconstitutional in that the right to pay equity or equal pay for work of equal value, once established, could not be limited to a pre-set quantum. It appears to us that a parallel exists here. The difference is that in Ontario the amount becomes limited by allowing the right, once achieved, to be eroded.

The fact that the proposed section calls for a regulation is also troublesome. We do not know what the specific limitations in the regulation would be, but it would have the potential to do nothing but unglue the act from which it flows.

If the section is passed and a maintenance requirement is limited by regulation, employers will save money. This should not be the motive behind a change of this sort. Other proposals in this bill, which we have not specifically spoken to, address the question of delaying the costs associated with the achievement of pay equity. Undoing the adjustments already made under the act should not be the approach taken to fitting pay equity rights into a weak economy. The women the act benefits have underwritten the costs of doing business for decades by working for less money than the value of their work, by male standards, should have delivered. It is one thing to ask them to stretch full achievement of their rights for a few years; it is quite another to ask them to give up a portion or all of what they have gained in the exercise of their rights.

At the commission, we've been asked for guidance on how maintenance works. The act, in one sense, is not specific in providing these details. In another sense, however, the meaning of "maintenance" is self-evident. The act provides the method for achieving pay equity in the first place; "maintaining" means reapplying the same principles and methodology to ensure that the gap that was once there does not re-emerge for any reason.

The commission published a booklet in June 1990 which discusses maintenance, and we've distributed a large number of copies through our efforts to educate and inform those responsible for implementing the act's requirements. As part of our ongoing work in this regard, we will be responsive to any needs for additional information on this topic.

Much like our approach of providing interpretative guidelines to assist parties to achieve pay equity, we would prefer not to have a regulation issued with respect to maintenance. In a relatively new legislative area, attempting to be definitive in a regulation would itself limit the scope of the topic and ignore the better understanding of all dimensions of the issue which develops through experience and a growing body of case law.

While we are the experts in what pay equity is, we continue to admit that we do not possess a perfect knowledge of systemic discrimination in all its facets. Maintenance is integral to remedying pay inequities based on gender. It would be to pull up short in the efforts to eradicate the problem if we were at this stage to draw a fence around what maintenance means.



In overall conclusion, we are very supportive of Bill 102. We recommended the two new approaches to pay equity, proportional value and proxy three years ago, and we see both approaches as the best way to extend pay equity to more Ontario women.

**The Chair:** Thank you. You each have about 11 minutes for questions and comments.

**Mr Winner:** I'd like to come back to one of the earlier issues you raised around standing before the hearings tribunal. At one point in your presentation, you indicated that the commission had applied for standing at the hearings tribunal and that standing was denied. The first part of my question is, why was standing denied?

**Ms Killoran:** Standing was denied on the basis that we did not have a substantial and direct interest in the litigation. We were seeking enforcement of a review officer's order, and neither of the parties were prepared to appear as applicants before the hearings tribunal.

**Mr Winner:** If the Pay Equity Commission doesn't have a substantial interest, who does? A number of groups have suggested that unions, for example, or employee organizations be given standing to represent the interests of the individuals who may be daunted by the formalities of a hearings tribunal. Do you agree with that?

**Ms Killoran:** Those who are members of bargaining units have the option of being and are represented by their bargaining agent, usually through legal counsel. Those who are unrepresented, are not members of bargaining units, have access, as I said, to PEALS. We would hope to supplement and improve accessibility to the hearings tribunal by offering our legal counsel solely for the purpose of enforcing orders.

**Mr Winner:** I understand why the Pay Equity Commission might seek standing. I'm also wondering whether you would agree or disagree that a union or other employee organization be, of its own desire, given standing where the individual doesn't consent or object to being represented by the organization.

**Ms Killoran:** I don't have any objection to that if it's in agreement between the union and the individual. I can't foresee those circumstances actually occurring.

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**Ms Murdock:** As a supplement to what David has been asking, in those cases where the Pay Equity Commission was not recognized, did you go on for judicial review? You are reviewable. Did you apply to go to court on the question? If the Pay Equity Commission doesn't have any standing—I mean, I would seriously question that. I don't think, from the sound of it, that you went on for judicial review. If you didn't, then why didn't you?

**Ms Killoran:** We approached this in a very measured way and sought a legal opinion as to the advisability of proceeding to judicial review. It certainly was one of our options. We arrived at the conclusion that our interests would be better served by seeking an amendment to the act. For example, if we had proceeded to judicial review, it would deal with that case only and might not have wider implications.

**Ms Murdock:** Mind you, though, you would say the precedent has been set. But under subsection 24(5), you

have automatic—well, I don't know. I have difficulty, because I read the act as saying that you do have; the act gives you that right.

**Ms Killoran:** That was always our assumption and our reading of the act. It was our experience with the first two cases that the hearings tribunal made the assessment that it couldn't hear the cases because there was no applicant; after the case had been referred, neither party would be an applicant. Our response to that was that we would come forward as the applicant and solve the problem. When we did that, we were told we did not have standing as an applicant. So we see that there must be a gap in the act, in the present interpretation of the act, in that there's a power to refer, but then that does not lead any further unless one of the parties is prepared to be an applicant.

**Ms Murdock:** But traditionally, a judicial review—once a decision is made in any of the courts, it is considered precedent-setting and could be referred to in a subsequent case, correct?

**Ms Killoran:** It would depend on the particular circumstances of each case. In this situation, it might not have been very helpful.

**Ms Murdock:** Most of the groups to come before us haven't gotten into, in great detail—with the exception of consultants being allowed standing—any of the provisions under Bill 102 that will affect the operations of the Pay Equity Commission. But because they have particularly addressed themselves to who would have standing, a lot of the groups, particularly yesterday and the day before, the unions in particular, were concerned that consultants would have standing. I want to know your opinion on that.

**Ms Killoran:** I'm not prepared to offer an opinion on that. It is not something that's within our area of concern. We're not speaking on behalf of the Pay Equity Hearings Tribunal. I'm speaking on behalf of the office.

**Ms Poole:** Thank you very much for coming before us. Obviously you have—I don't want to say the ultimate expertise in this area, but certainly close to it. I do appreciate, Brigid, that you came to meet with various members of the opposition who indicated that we would like to meet with you and get the benefit of your expertise earlier on in the process, so we appreciate that.

You've highlighted particularly two areas in your brief, one which was basically the administrative side and how you would like some changes as far as your status before coming before the tribunal, that type of thing; then the second one, which I think is a really crucial issue, is the maintenance issue, and you've put it very strongly here. You've said, referring to subsection 8(5), "Simply put, if this section of the bill is passed, the gains made in addressing pay equity could be undone; in a few years' time, the Legislature may need to consider another pay equity act in order to recoup the lost ground that this section has the capacity to bring about."

I would assume that the government consulted heavily with the Pay Equity Commission when it was drafting, first, Bill 168 and then its replacement, 102. When they came to you with a draft version of 102, did you point out the dramatic implications of this section? Because even though we've had a number of presentations that have said they think



this is step back and that it's going to have an impact, I don't think most of the presenters realize how deadly this little section is and that it can really undo a lot of work. Was there consultation, and did the government give you a rationale for including that section?

**Ms O'Reilly:** We worked with the policy branch at the Ministry of Labour primarily on proportional value and proxy, as our experiences I cited with how the Pay Equity Act works helped to inform proportional value and proxy. So that's the area from which we came.

**Ms Poole:** So there really wasn't a great deal of consultation on this particular section; you didn't have that opportunity to actually address it. I was concerned when I saw that section in there, particularly as group after group has picked up that this is going to be a real problem. I don't know why it is in there, what the motivation was. I would have thought that if anybody could shed light on it, it would be the Pay Equity Commission. Perhaps we're going to have the Ministry of Labour back for more questions, and I think potentially the minister on this particular one, so we'll ask them that question.

You said you've dealt mainly with proportional value and proxy in your consultations with the government. When the Liberal government announced in March 1990 that it was going to extend pay equity on the basis of proportional value, at that stage I assume there was a consultation with the Pay Equity Commission, particularly because of your extensive report, in how to implement it.

Was there any discussion, for instance, of terminology, such as "a representative male job class" being the terminology as opposed to "male job class (classes)"? Was there any talk about that type of terminology? Because we've had, I think, probably three basic criticisms of proportional value.

One is that there are regulations allowed on proportional value, as opposed to including the mechanisms right in the legislation. The second was in terminology, such as using "a representative male job class." A third one was allowing employers who had failed to do what the legislation required them to do, which is to post a plan on the job-to-job method, to go directly to proportional. They collect \$200 as they pass Go, because they get to choose the mechanism which allows them to delay the implementation, and not go through the process that the responsible employers used in doing their duty under the act.

I wonder if you could comment on these particular sections of 102 that have come under some criticism from various groups as to how proportional value would be implemented.

**Mr Lapp:** I think there are two parts in there. First, in terms of the representative group of male job classes, most proportional value methods, the vast preponderance, require more than one male job class. There are some limited circumstances where theoretically it could be done with one, but you'd want to take a pretty close look at it. I think for that reason the wording was put in as being in the plural, and if it arose as an issue, then at that time there'd have to be some discussion as to whether the plural included the singular in a situation where you could justify using a single male job class.

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**Ms Poole:** Just on that point before you go on to the other ones, we had a presentation from the Ontario Nurses' Association, ONA, which submitted that this type of very loose terminology was going to end in extensive litigation. As you're well aware, ONA has been before the pay equity tribunal with a number of precedent-setting cases and knows full well the cost of going to tribunal. They said that if the terminology "representative male job classes" was used, they foresaw a great deal of expensive litigation down the road. Would you like to comment on that?

**Mr Lapp:** Yes. Essentially, if you take the two ends of the spectrum, being the notional definition that's in the bill and one where the bill would prescribe a very tight, set-out formula for proportional value, our clear preference was for the former. In other words, where you set out an idea of what it is you're trying to achieve in order to meet the objectives of the act—

**Ms Poole:** Right in the legislation.

**Mr Lapp:** Yes—it then leaves latitude to accommodate the variety of fact situations there would be in making proportional value work. In other words, if you have a very tight definition, it would exclude the use of proportional value in a lot of settings where the facts just didn't fit that type of definition, so it was our preference to have a definition of proportional value which essentially enabled it to be successful as opposed to restricted its use.

Can I just go back to the second part of your first question, which had to do with the commencement date, if you will, of proportional value adjustments. The bill sets out that proportional value must be used if there's a situation where there's a female job class which was not able to be compared under job-to-job. It also essentially says that you could use proportional value instead of doing job-to-job. It's my understanding of the bill, and I guess I look at it more closely from that point of view, that the bill requires you to have tried job-to-job first, then requires you to use proportional on those that you can't, and that those dates stem from the job-to-job dates.

**Ms Poole:** Just on a clarification on that matter, that certainly isn't the understanding of the legal counsel of the groups that have come before us. They are interpreting that to mean that an employer who has not done job-to-job who should have done job-to-job in fact will now opt to go for the proportional method because it has a later commencement date and that they're limiting their liability. So if you would either like to comment now, or perhaps if you would like to take a second look at that and report back to the committee later, I would be very appreciative.

**Ms Killoran:** That wasn't the intent of the section, and if that indeed is the effect it has, I think it can be fairly easily corrected. But that hasn't been our interpretation of the section to date.

**Ms Poole:** Thank you. We'll perhaps ask for legal counsel's interpretation then of that one.

One final question: Something else that you haven't mentioned in your brief, and I understand that you wanted it to be very specific to administrative tasks the commission is engaged in, but one other area which you haven't mentioned in the brief is the fact that the implementation date for the public



sector as established in the 1987 pay equity legislation, which was January 1, 1995, as a deadline for achieving pay equity in the public sector, that particular deadline has been extended to January 1, 1998.

Many of the groups, in fact I think all of the groups that have come before us, have been extremely critical and see this as a step backwards, that it will affect women's pension plans and there will be ramifications for women in that it is breaking a commitment that was made. Would you like to comment on that? Is it your estimation that the government should proceed with the January 1, 1995, date?

**Ms O'Reilly:** If I could just back up a little bit, I think some of you are familiar with the background of the first act. When the first act came about, the most mature experience in North America at that point was the state of Minnesota, where pay equity extended to parts of the public sector, not to it entirely. Their overall pay equity costs had come in at something between 3% and 4%. It appears from reading background pieces and some of the work around the current act that that was a kind of guideline to this idea of a five-year span being able to capture those pay equity shortcomings in the public sector.

We've heard this morning too from unions that have seen that the 5% in particular areas isn't problematic, and they're unfamiliar with how it's problematic in other areas. We're in the same boat that they are, that we're not aware of how it's problematic in other areas, but it appears to be.

**Ms Poole:** So do you support the extension of the time line or not?

**Ms O'Reilly:** As we said in the brief, we share the frustration of women who see this delay in the time line and delay in the implementation dates for proxy and proportional values. We share that frustration because this has been a long time coming and a long time improving.

**Mr David Tilson (Dufferin-Peel):** Thank you for your presentation. I'd like you to help me with the Pay Equity Commission and tell me a little bit about it. What's the staff complement of the Pay Equity Commission?

**Ms O'Reilly:** We're now at approximately 80. About 65 of those are on the office side and about 15 on the tribunal side.

**Mr Tilson:** Can you tell me the percentage of that staff complement that are men and women?

**Ms O'Reilly:** Off the top of my head, it's about 25% to 30% men.

**Mr Tilson:** Is there a reason for that?

**Ms O'Reilly:** No, not a particular one that comes to mind.

**Mr Tilson:** I just find it interesting, the subject of the Pay Equity Commission. There's almost an inequity there as far as the other way, which gets to a question on this very important issue in our society.

We all recall when bilingualism became an issue, particularly in the 1970s in this country, and there has been, and still is in my opinion, a certain amount of resistance to the implementation of bilingualism throughout this country. Whether they are wrong or not, there is a certain amount of resistance among certain areas of our country on that topic.

Can you tell me what resistance you have found, in telephone calls, if you indeed document those, or correspondence to your office, to what has gone on and what is about to go on?

**Ms O'Reilly:** I do, with the head of the commission, contact a lot of people throughout the province of Ontario, and I have had telephone calls to phone-in shows, if you will, and very, very few people in this province have any difficulty with equity and very few of them have any difficulty with pay equity. Some occasionally do ask just the sorts of questions you have asked, but those questions don't seem to be at the root of a particular problem. I think they're just checking up that males and females are represented at the commission.

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**Mr Tilson:** I can honestly say in my constituency office I don't, unless some calls have come in that my constituency staff haven't told me about—but there haven't been many calls that have come into my office for or against the subject of pay equity, at least in my riding. Maybe there have and they just haven't been drawn to my attention.

My question to you is whether you, not necessarily you personally but your staff, get correspondence or calls expressing positive thoughts or negative thoughts on this subject?

**Ms O'Reilly:** There are always going to be some people who have some difficulty with a notion like this, but the calls that come into our hotline are people who are asking questions about how they do achieve pay equity in their workplace.

**Mr Tilson:** Yes. I understand that you're going to have the inquiry type of call but calls, for example, from employers who are expressing a concern as to the effect that these decisions may have on the operation of their businesses. I'm not trying to put words in your mouth; I'm trying to ask what sorts of calls, if any. Maybe you don't get any. That's fine too.

**Ms O'Reilly:** We get very few, as I say, who are opposed to the principle of equity, which I think most Canadians are not.

**Mr Tilson:** Right. Now, can you tell me, do you docket the calls?

**Ms O'Reilly:** Yes.

**Mr Tilson:** Do you have a process of docketing the calls? What do you do? Are the contents of those calls put down or just simply that so-and-so called at a particular time on a particular day?

**Ms O'Reilly:** No, we have forms.

**Mr Tilson:** You have indicated what the complement of your staff is now. With the implementation of this bill, can you tell us what your forecast of your staff complement will be between now and the turn of the century?

**Ms O'Reilly:** We anticipate that we will need more staff—not a great many more—to work through these two new approaches to pay equity and we anticipate going to ask for some increased resources, but we don't see that extending probably to the end of the century.

**Mr Tilson:** Do you have a report that you can make available to the committee on that subject?

**Ms O'Reilly:** No. We are still in the anticipation stages and working through it in our offices.

**Mr Tilson:** So you haven't advised the government as to what staff complement might be necessary for the Pay Equity

Commission to satisfactorily implement the proposals? You haven't provided the government with any of that information?

**Ms O'Reilly:** In the estimates process, which I guess most people on the committee would be familiar with—

**Mr Tilson:** I'm not. Maybe you can tell us what to expect.

**Ms O'Reilly:** —we did alert the government to the fact that the expansion of pay equity could involve more resources at the commission.

**Mr Tilson:** Can you provide details of that today?

**Ms O'Reilly:** No, I can't provide those details today.

**Mr Tilson:** Can you undertake to provide the committee with that information?

**Ms O'Reilly:** I can talk to the Ministry of Labour and see what—

**Mr Tilson:** No. My question is directed to the Pay Equity Commission as to what information the commission has that it could make available to this committee.

**Ms O'Reilly:** Okay, I'll find out what information we have that we can make available.

**Mr Tilson:** What information do you have?

**Ms O'Reilly:** As I said, we are discussing it at the commission itself relative to what we anticipate.

**Mr Tilson:** I understand that, and of course the concern I have is that the minister made a statement, when he appeared before this committee, indicating anticipated costs this year and the years in the future. I'm trying to find out details about that. It would seem to me that one of the sources of what the cost of implementing this legislation is through your commission. I'd like you to help the committee and give us that information.

**Ms O'Reilly:** As I said, we're still under discussion at the commission as to the resources we might need in order to see the expansion of the act and the amended bill.

**Mr Tilson:** So at this stage you've given the ministry very little information is what you're saying.

**Ms O'Reilly:** Yes, that's right.

**Mr Tilson:** Okay. What sort of outside staff do you contract, particularly in the legal area or any other area currently?

**Ms O'Reilly:** We do contract research of employers who have passed the compliance date of pay equity from our policy and research branch.

**Mr Tilson:** Can you provide us with details of that currently, as to what that means?

**Ms O'Reilly:** That's one research project a year that we commission.

**Mr Tilson:** I guess what I'm looking for is the number of people that you contract out to and the cost to the commission that entails. Can you provide that to the committee?

**Ms O'Reilly:** I'm not sure whether I can or not at this very moment, but I can certainly make an effort to find out.

**Mr Tilson:** Can you tell us what estimates, with this legislation, contracting out and the size of the staff you'll be contracting out or the number of individuals you'll be contracting out will increase by, if any?

**Ms O'Reilly:** I can try and provide those estimates, but at this point I can't off the top of my head.

**Mr Tilson:** You don't have that information is what you're saying.

**Ms O'Reilly:** I don't have right now a projection of contracted research. That's your question?

**Mr Tilson:** That's my question.

You're at 150 Eglinton Avenue East. Can you tell us whether you anticipate, with the increase of staff, that you will require more office space to properly operate the Pay Equity Commission?

**Ms O'Reilly:** At this point we don't anticipate increased space needs.

**Mr Tilson:** When this legislation is fully implemented, do you believe that you will require more office space?

**Ms O'Reilly:** At this point we do not.

**Mr Tilson:** At this point you do not, but when the legislation is fully implemented—I'm speaking of the turn of the century—with the forecasts that you'll be making to properly administer this legislation, do you anticipate that you will require more office space?

**Ms O'Reilly:** At this point I don't anticipate that we will.

**Mr Tilson:** I wonder if you can philosophize with me for a moment on the subject of pay equity. Will there be a time that the size of the Pay Equity Commission will be downsized because of, hopefully, objectives that will have been reached?

**Ms O'Reilly:** I would anticipate that, yes.

**Mr Tilson:** When would you anticipate that?

**Ms O'Reilly:** I can't say at this moment when I'd anticipate that, but, as you probably realize, in the private sector the compliance dates for pay equity have been staggered according to the size of the employer, so the largest employers, those of over 500 employees, posted their plans on January 1, 1990. We're now moving in the private sector through to the end of those compliance dates, which would suggest that there could be some stabilizing or shrinkage of the functions of some of the Pay Equity Commission.

**Mr Tilson:** I guess what I'm getting at is that if you anticipate that the objectives of this will be reached—and hopefully they will. I'm sure the government is hopeful they will be reached and I'm sure you are. Having said that, is there a proposal with respect to the retaining of staff, that you anticipate there will be a period of time when you will not need a certain number of staff?

**Ms O'Reilly:** In the life of an act like this that does have these phases, that makes a great deal of sense, yes, and we do probably anticipate that.

**Mr Tilson:** In your hiring practices, have you made it clear that there may be a time when, because the objectives hopefully will be reached, staff will no longer be required? Have you made that clear to the people on your commission?

**Ms O'Reilly:** We all work very closely with the act at the commission. We see that the act does have these compliance dates, that the act and pay equity itself have a life which, as you say, we hope will lead to achievement. The Pay Equity Act also now calls for a review in 1995 of the act itself and of the functioning of the act, and we certainly anticipate in the



planning we do at the commission that the life, size and function of the commission will be part of that review as well.

**The Chair:** Thank you, Mr Tilson. Ms Poole?

**Ms Poole:** Just to ask—

**Mr Tilson:** Are we going around backwards?

**The Chair:** No, this is just for clarification.

**Ms Poole:** Just a point of information I'm asking for. In my question I had asked if we could have legislative counsel give us an opinion as to whether section 21.2 of Bill 102 makes it clear that if an employer who has failed to post a pay equity plan and who can achieve pay equity for some or all of its employees in female job classes under the job-to-job method of comparison must do so before using the proportional

method and must comply with the schedule for payments found in section 13.

Could we have that clarification from legislative counsel as to whether they feel that this is already contained in Bill 102 or whether it would be necessary to add this section in order to ensure that some of these employers who have not fulfilled their duties do so?

**The Chair:** We'll contact legislative counsel and get back to you on that. Ms O'Reilly, Ms Killoran and Mr Lapp, on behalf of this committee I'd like to thank you for taking the time out this morning and giving us your presentation. This committee stands recessed till 1:30 this afternoon.

The committee recessed at 1201.

## AFTERNOON SITTING

The committee resumed at 1345.

ONTARIO ASSOCIATION OF INTERVAL  
AND TRANSITION HOUSES

**The Chair:** I'd like to call this meeting back to order. I call forward our first presenters for this afternoon, from the Ontario Association of Interval and Transition Houses. Good afternoon.

Just a reminder, you'll be allowed up to one hour for your presentation. The committee would appreciate it if you would keep your remarks slightly briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Ms Trudy Don:** My name is Trudy Don. I'm the coordinator of the organization. With me are Joanne King, who's the chair of our pay equity ad hoc committee, and Kim Fraser, who's on our lobby committee. I can't remember everybody here, but a couple of our members are behind us here as well.

We probably won't take up a whole hour; we haven't got an awful lot to present. I will read our brief. We have a few questions that we ourselves would like to ask of the committee that we are not very clear about.

The Ontario Association of Interval and Transition Houses is the umbrella organization for 82 shelters for abused women and their children across Ontario. As an association, we provide advocacy on behalf of the women who come to our shelters for protection and support as well as on behalf of the shelters that provide these services.

Approximately 900 women are employed in the shelters across the province—this is a fairly accurate guess; we are not quite sure of the exact number, but it's around about 900—as executive directors, front-line counsellors, advocacy workers, child care workers, public education workers, housing advocates, administrative staff etc. The average number of staff employed by each shelter will depend on the number of beds in that shelter and can range from eight to 15 or more staff. Our shelters are operated as non-profit charitable institutions governed by community boards of directors, at least the majority of them. Some of them are still run by regional or local councils. Those are the family resource centres that were started in 1983-84.

Salaries for these workers range from a minimum of approximately \$22,000 to a maximum in the \$45,000 range. About a third of the shelters are unionized, while several others are investigating the advantages of unionization.

The first shelters that opened in the early 1970s received their funding through federal manpower and immigration grants—local initiative projects—that were intended to reduce the unemployment rate. Salaries were set at the rate for minimum wage. In fact, I think our take-home pay was \$85.16, if I remember correctly, per week. By the mid-1970s, contracts were signed with municipalities and/or provincial governments for purchase-of-service agreements.

To date, shelters still negotiate their budgets with regional program supervisors of the Ministry of Community and Social Services as part of the hostel agreement under the

General Welfare Assistance Act. The reason why we want to emphasize this is because we have a particular concern about the fact that services for abused women are still regarded as a welfare issue rather than a human rights issue. I know this has nothing to do with pay equity, but I think it's important to point that out. It's one that we've been fighting for a long time and feel strongly about.

OAITH, with all other female-predominant sectors, has waited anxiously for an opportunity to achieve equitable pay for the dedicated women we represent. We believe that the continued existence of shelters for abused women and children has been made possible by our members' willingness to work for low wages as they put their belief in women's rights to live a life free of violence and persecution ahead of their own rights for equitable pay. We believe the recognition of this dedication, through the achievement of pay equity, is long overdue.

However, we are uneasy about the reality of achieving pay equity by way of the amendments outlined in Bill 102. Our workplaces are all predominantly female; there are no male job classes with which to make comparisons. Therefore, our comments to Bill 102 refer primarily to the proxy method of comparisons.

Let me explain. We're not all that sure we understand this bill either. We haven't have an awful lot of chance to really investigate this with the kind of expertise that I believe is needed to read this.

**Mr Tilson:** Neither have we.

**Ms Murdock:** Speak for yourself.

**Mr Tilson:** I'll be looking forward to hearing you explain it.

**Ms Murdock:** And I'll be happy to.

**The Chair:** Order. You'll each have your opportunity.

**Mr Malkowski:** On a point of order, Mr Chair: I prefer to hear the presenters rather than the arguments back and forth.

**The Chair:** Thank you, Mr Malkowski. Please proceed.

**Ms Don:** Our major concerns with the proxy method described in this amendment fall essentially into three categories: (1) our inability to anticipate critical aspects of implementation, as the information will appear in the regulations to which we have not as yet had any access; (2) the inherent limitations implied in this version of proxy comparison; and (3) the obstacles to implementing this process: a time-consuming, unwieldy method with scarce resources.

We'll address these three points in turn.

(1) Information contained in regulations, essential to our understanding of the implementation process, includes, but is not limited to:

(a) The limitations/guidelines for the selection of the proxy establishment by the seeking organization. We quote here from Bill 102:

"The seeking employer shall select the proxy establishment to be used for the purposes of the proxy method of comparison in accordance with the regulations."

This information is key to our ability to envision the sorts of comparisons which may be forthcoming and to anticipate



the level of cooperation and integrity and sophistication of the pay equity process of the proxy establishments.

(b) The limitations on seeking employers wishing to enter into an agreement for the purpose of combining establishments—that again is section 21.16 of Bill 102.

Our ability to implement pay equity by the proxy comparison method, on a shelter-by-shelter basis, will be severely constrained by our lack of resources. Women's shelters do not have human resources departments, funds for engaging consultants or the administrative staff time necessary for implementation as outlined at the present in Bill 102. Therefore, we're keenly interested in all possible means of collectively responding to this amendment either on an association/province-wide basis or on the regional or other sizeable groupings combinations.

If we had to do this on an individual basis or just on a small regional basis, we're just not going to be able to do this, ever.

(c) The additional information which seeking organizations may ask for from the potential proxy establishment.

"21.17 For the purpose of making a comparison for a key female job class using the proxy method, a seeking employer may request any potential proxy employer to provide it with the following information relating to a potential proxy establishment of the potential proxy employer:"—it's wonderful language; I love it—"Such other information as may be prescribed in the regulations."

"(2.e) The request contains such additional information as may be prescribed by the regulations."

We'd be interested to know if this additional information could include a detailed description of the job information gathering and a description and evaluation system of the potential proxy establishments. It seems to us particularly important information if the seeking organization is to feel confident that it is providing its employees with an equitable, comparative job rate.

We are aware that pay equity has been implemented with varying degrees of sincerity and expertise and would want assurance that our members will not be held hostage by rates achieved through shoddy implementation on the part of the proxy establishment.

(2) The inherent limitations of the proxy method outlined in Bill 102: We'll list only those aspects which we see as most critical: "(a) the comparison to female job classes in the proxy establishment," and "(b) whose duties and responsibilities are similar to those of the key female job class in the seeking organization."

We see this limitation as a shocking departure from what we consider to be the essential nature of the original Pay Equity Act. The value of female-to-female job class comparisons, as described here, will be completely dependent on the integrity of the proxy organization's pay equity process. As we continue to assume this government's intentions are honourable, we ask you to reconsider. Otherwise, proxy comparisons will result only in entrenching any gender-based inequities not addressed by the proxy establishment.

We also believe the limitations of comparisons to similar job classes to be another major departure from the original concept of pay equity, which we understood was largely focused on achieving legitimacy for comparisons of dissimilar jobs.

It seems to us the essential nature of pay equity for our members is minimized and restricted by these limitations and that female-predominant sectors are given an impoverished and impractical device with which to combat wage discrimination. We cannot but wonder if this in itself is an example of systemic gender discrimination in law and a violation of charter rights.

(3) The obstacles to achieving implementation with scarce resources: The process of implementing proxy comparison as described throughout part III.2 of Bill 102 will be a cumbersome one for women's shelters. Most women's shelters in Ontario have fewer staff than many small employers. We expect that each phase of implementation will impose a significant burden of time and, therefore, money.

The collection of information, the development or adaptation of a bias-free evaluation system and the evaluation system process itself all demand a great number of woman-hours. To add to that the need to communicate with the pay equity office to initiate the process and to correspond with one, several or maybe a series of potential proxy establishments indeed may not be possible without an injection of funds for this purpose.

We therefore want to be clearly on record as saying that without additional resources being available to us with which we may fund relief staff positions and/or contract with those who have greater expertise or availability, we must seriously question our ability to implement the proxy method.

As suggested earlier in this brief, the regulations may hold the answers to some of our questions. As we cannot foresee which sorts of establishments may act as proxy establishments, we are unable to project the impact of this act on our relationship with them. The majority of our shelters exist in small and medium-sized communities and rely heavily on good relations with their community for the ability to do public education, develop protocols and seek support in the form of fund-raising etc. It seems to us that the seeking organizations may be placed in some jeopardy, where those good relations could be destroyed, if the process of information gathering and reviewing does not progress smoothly.

In conclusion and to state our case most plainly, we wonder if the cost of achieving pay equity will prove to be greater than the results. Thank you.

**The Chair:** Thank you. Each caucus will have 15 minutes for questions and comments. Ms Poole.

**Ms Poole:** Thank you very much for coming today. I think you've put together a very well versed brief, and if you don't understand all the terminology of the Pay Equity Act, believe me, the members of the committee are trying to wade through it as well. We found a number of presenters have made the same point.

In fact, we had originally scheduled two weeks for pay equity hearings. I don't think the problem is lack of interest—

**Ms Don:** Oh, no.

**Ms Poole:** —but we've only filled up one week, because I think a lot of people feel totally inadequate wading through all the language and technological explanations in order to get to the meat of it. So we really do appreciate your comments.



You've made a number of unique comments that we haven't heard before, and I think this is partially because either the other sectors we've heard from have been a lot of child care workers who would find it much easier to find a proxy comparator organization than, say, the transition houses, or we've heard from women such as the nurses, who already, for the most part, are covered under the current Pay Equity Act but feel that this act is a clawback. But you're in kind of a unique situation, so I'd like to explore that.

One of the things you say, and you're actually the first group that I think has made this point so clearly, is, "The obstacles to implementing this process:"—referring to proxy—"a time-consuming, unwieldy method with scarce resources," that this is one of your major concerns, and it is the resources I'd like to talk to you about.

Late in the fall, I think it was November, OAITH had your lobby, and at that time you were very critical of payments to the shelters that had not kept up with the rate of inflation. The concern I have, which I think is shared by a number of broader public sector groups, is that if the government doesn't come forward with the funds for the pay equity, not only to make sure the women themselves get the payments but also the process of ensuring pay equity, you will be in a really untenable position. Right now, you're really stretched to the maximum for your resources. Have you talked to the government about this? I'm not quite satisfied with what they've said about picking up the cost. I haven't seen any specifics. I haven't heard them say they're going to give you the resources to implement the plan and I haven't heard them say they will guarantee that 100% of the costs will be borne by the government so that you don't have to cut more programs. I wonder if you've talked to the government about this and, if you have, what the response has been.

1400

**Ms Joanne King:** I don't think we have specifically addressed that with the government yet. We're hoping this is our first step in communicating our concerns, and we will certainly be communicating to the government our concerns about the expense of implementing pay equity.

**Ms Poole:** I guess that is one of the basic concerns there have been with proxy, that it's extremely expensive. While the very valid point has been made that there's no reason why this government should make women responsible for bearing the brunt of this, while that point has been quite validly made, I am concerned that if the government doesn't pick up its share, women will be in a worse position than before, because you will either have to cut staff or women will have to be working much harder to do the same job because there will be fewer resources.

So I would really urge you to talk to the government about this and try to get some commitments from it. When we asked for a costing—they haven't been able to give us a costing. For instance, when Bill 102 came in and there was a three-year delay in implementing the current act in the public sector, I asked the Ministry of Labour for a costing of what the whole thing was going to cost, and it has no numbers.

I'm concerned that with a government that is fighting a very real deficit problem, once again we'll be behind the eight ball,

because you'll have payments cut and you'll end up bearing the burden. I don't know if anybody wants to comment.

**Ms Kim Fraser:** One of the things we're also concerned about is whether, when pay equity is finally realized with proxy, this will be a fair method of addressing wage disparities, whether it will really do that in the long run. That's one of our other concerns, and we're just beginning to look at the concerns you're raising about how we actually go about trying to use a proxy method, whether it will be really difficult, expensive and, in the long run, even if it's achieved, whether it's a really fair way: to look at another organization where women have achieved pay equity and then just take its adjustment, whatever that may be.

**Ms Poole:** One of the points you've made in your brief regarding this is the fact that you believe female jobs should have been compared to men's jobs, that this proxy method is a very convoluted way of reaching that and it depends on the integrity of the pay equity progress that the comparator organization has gone through: If there was something wrong with their process, then you will be comparing yourself to an inequitable situation.

**Ms King:** Exactly, and we have no way of knowing what their process has been, necessarily, because we're not sure to what extent we will know what process they've used, exactly how their surveys were done, what their evaluation system has been. We're not sure that we'll have that information.

I've been an executive director at two shelters. At my current shelter we live in an area with a population of about 15,000 in the town. My former shelter was in an even more remote area, with a population of 1,300 in a small town, where the possibility of finding a proxy establishment may be very unlikely, or at least having a choice: There may be one proxy establishment we perhaps could use. What would happen in an instance where we found their process did not meet our standards of integrity? Would we be in a position where we would need to expose that and then suffer even further difficulties within our community? Those are our concerns.

**Ms Poole:** That means you have to go outside your geographic boundaries, which has its own set of problems attached to it.

I had one final question that was in my mind just before you made that comment. By the way, I must say that I thoroughly agree with your comments about the regulations and wanting things spelled out in the legislation, as opposed to leaving unknown quantities to regulations. I think that point is quite well taken. I did have one other question which was crucial at the time, but I'm going to let Mrs Caplan go, in case it floats back to me later.

**Mrs Caplan:** Your brief is excellent. I'm very much aware of the frustrations and concerns you have. Pay equity policy has always been quite technical and difficult. Unfortunately, the terminology in this legislation continues that difficult precedent.

There are a couple of things you haven't mentioned in the brief which have been brought to our attention from other presenters. One that was addressed as well by the Pay Equity Commission, the tribunal people who were here this morning, was on the issue of maintenance. Under the existing legislation that was passed in 1987, there was a principle that said



that once pay equity was achieved, there was an obligation that those gains be maintained. This legislation is seen as eroding those principles. The Ontario Nurses' Association has said that's a step backwards. We've heard from a number of presenters that they see this as regressive. CUPE, which was here this morning, made the same point that this was a step backwards. We have a number of people who are pointing to what I think has been overlooked by a number of groups. Did you see that in this legislation? Is it something you overlooked or is there some reason that you haven't mentioned it in your brief?

**Ms Don:** I think it was overlooked, frankly.

**Mrs Caplan:** So you're not aware that that's one of the significant changes in this legislation?

**Ms Don:** One of the problems, as I think we've pointed out in our brief, is that we're extremely understaffed all the time. You really need to have that expertise to be able even to realize that these things are changed in the next legislation. It's extremely difficult to keep up with that. I'd just like to remind you that Kim and I made a presentation about three years ago which I think we called, "Just give us the money," and I think we still feel that way.

**Mrs Caplan:** I've always seen the issue of low wages as a separate issue from pay equity, particularly in certain areas of work in the province. I think of interval and transition houses and others where there are not comparable jobs. Often it's an issue of undervaluation that has nothing to do with the comparison of like male work. As you say, there may not be anything like it at all and it is simply a question of undervaluation and low wages. I see those as very separate issues.

The last point I would like to make is that I think one of the reasons some of the advocates for justice and equity for women have missed the erosion of the principles in this legislation is that they would never have believed that Bob Rae and the NDP would have taken away from women the fundamental principles that were fought for and gained in the original Pay Equity Act in 1987. I'm concerned, because I think a lot of people are disappointed in this legislation but haven't looked beyond that to what the implications are and how serious this is, as we've heard from a couple of presenters: a backwards step in taking away some of those gains that were fought for over the years.

**The Chair:** Ms Poole, you have about four minutes left.

**Ms Poole:** Thank you. I finally got my brain together and thought of the question that floated through my mind as you were speaking earlier.

1410

You've been fairly critical of the proxy method in Bill 102. I think you've described it as complex and unwieldy. There's no doubt, it's a costly way to do it. I've been trying to think whether there are other ways we could accomplish the same goal. For instance, in your sector, which is female-dominated and underpaid, is there a way that we could raise those wages without making you wait so long and without having you go through this process which you don't have the resources to implement?

One of the things that I found worked really well with child care workers and homemakers was a wage enhancement

scheme. Back in 1987, New Directions for Child Care had what it called a direct operating grant, but it was really a wage enhancement for child care workers. It has now been in since 1987 and it's been supplemented by another wage enhancement program by the NDP government. It has made child care workers the highest paid in Canada; their wages are at least starting to approach something human as opposed to subhuman. I'm wondering if we could do the same thing for transition and interval house workers.

**Ms Don:** I think a first step was made on that. We had a salary compensation thing where the bottom wages went up from \$18,000, I think it was, to \$22,000. Unfortunately, it hasn't kept in step. It's still down there. I think one of the reasons is what I pointed out: It's still trying to be paid under GWA, which is not the appropriate vehicle by which to fund these services. I think this really is a big issue.

When I sat in this room about 10 years ago when we had hearings on this, this was one of the recommendations which at that time was made by that all-party committee, that services for abused women should no longer be paid under general welfare assistance. We keep coming back to that, because I think that's where the problem is. As long as you try to fit us within that very limited legislation, you're going to be stuck in that and there's no way we could ever get out of it.

The reason I point it out is that we started off with LEAP funding at minimum wage. I think this is what has landed us in this position at this time, 20 years down the road. Because we started so low, we've never been able to catch up. I think you're right. The only way to do it is to do the enhancement thing.

**Ms King:** When that salary compensation process occurred several years ago, a benchmark was set at \$27,500. Anyone earning less than that got the \$1,000 per year—maybe it was \$1,018 or something like that—added on to their salary. As Trudy points out, in the case of workers who were then earning \$18,000, they came up to \$22,000, so there was a certain disparity there, but for other workers, it just locked them in at what was still less than adequate wages.

Also, concerning the point about the historical budgets, we've been tied to base budgets, so wherever a shelter started off living with the LEAP grants and the very, very poor base budgets, it's been stuck with those base budgets and cost-of-living increases. The system has maintained this female ghetto for us.

**Ms Poole:** This whole area needs to be revisited.

**Ms King:** I think there is a way to change that by looking at things like OAITH's alternative funding formula and our vision for funding, wherein we set out what we felt were adequate wages and our funding formula for the services that are essential services in the shelters.

**Mr Tilson:** Thank you for your presentation. You certainly raised some issues we will spend some time thinking about, and there's one issue in particular I'd like to canvass with you. But before I get to that, I will say that, as a man at least, I must congratulate the work a transition house does. I've had an opportunity as the provincial representative to become more familiar with the transition houses in my riding, but unless you're a woman or a politician, I doubt you get into those places. I was pleased that the staff took the time to



take me on a tour of the place and show me the conditions you work under, in my riding at least, and I assume it's a province-wide problem. I'm speaking specifically of the town of Orangeville and the counties of Dufferin and Caledon. Under the funding that's allowed, they do an exceptional job.

I am getting to a question on all of this. Because of the need for funding, simply to make it work—I mean, obviously, you used the words "scarce resources," and that exists now—considering what is required of you people, the expertise, the service that's required, and considering what you're being paid and considering the conditions that you're working under. I don't think a lot of people know that, perhaps for security reasons or for whatever reason. Obviously, the only reason I got in there was because I was the provincial member. It helped me understand some of the problems that you're going through.

When we start talking about pay equity—and yours, of all groups, is a group that can be set up as a prime example of where pay equity cries out for assistance—the difficulty is with the philosophies of governments, and I say plural to that, in the emphasis of funding to your organizations. There may be some minor movements, but very little. You've talked about different funding plans, but so far, from my observation, it's all talk.

The real question is, unless the government is prepared to put not only the funding that you want but the additional funding that's going to be required—because money has to come from somewhere; it just doesn't grow on trees—and considering that the problems that you're dealing with are increasing if anything, would it be fair to say that your appeal to this committee is not only to make some excellent observations with respect to the legal writing of the legislation but also to cry out for funding, and not only the funding that you have been asking for?

I don't think this legislation will work in your operations without major assistance, particularly at the level that you're at. I don't think it can possibly work unless the government is prepared to make a commitment. I'd like you to comment on that.

**Ms King:** I think that's the point we have made in our brief and continue to make, that while we do appreciate the commitment on the part of this government to pay equity for women, we find this legislation will be difficult for us to implement without additional resources.

**Mr Tilson:** Because there's only so much money in the budget that you get now. You keep crying out and saying the budget's terrible, the funding's terrible—

**Ms King:** Absolutely.

**Mr Tilson:** —and you now have another add-on where if this legislation is passed and is processed, you now have additional demands on that budget. Where is it going to come from?

**Ms King:** Where is it going to come from, and just the work involved in the process of determining the proxy method, when our commitment in the shelters is to put the majority of our dollars into direct services. So we do not have large administrative groups of staff. We don't have the human resources department. The executive director, where she exists, does everything. She's human resources, she's fund-

raising, she's community networking, she's public education, she's staff supervision, orientation, training, the whole kit and caboodle in one person.

I look at it for myself and I think, oh boy, this is going to be a lot more work, and we are very, very slim on the administrative support side because we want our dollars in direct services. Unless there's an influx of dollars specifically for this task or unless we are able to do it provincially in some way so that it's done once and for all for everybody at the same time in a good way, with integrity, we're just looking at more burnout on the part of our administrators in the shelters. I just don't see how it can be done.

1420

**Mr Tilson:** The second of my two questions, Mr Chairman, is to direct the delegation to page 4 of your brief under the heading "Inherent limitations of the proxy method outlined in Bill 102." You have addressed this somewhat with respect to the questions from the Liberal Party members of this committee. When I make heckles that I'm having trouble understanding this legislation too, I am. I'm quite serious with that.

Dealing with this specific area, with some of the comments that have been made by this delegation, to help me understand it, and the delegation has indicated that they have trouble understanding some of the terminology in the legislation and where the legislation's going, I would like if the staff could come to the table and provide their comments specifically on that paragraph 2, which goes on for part of page 4 and the top part of page 5.

**The Chair:** Would staff like to come forward. Please identify yourself.

**Ms Catherine Evans:** I'm Catherine Evans, policy adviser at the Ministry of Labour. I'm wondering if there's a specific—

**Mr Tilson:** Sorry, I was just making some comments to Ms Poole. I appreciate that it might be appropriate to ask the parliamentary assistant to make some comments. I guess my questions are more of an administrative type as opposed to a policy line of questioning, which is why I have asked the staff. I hope I didn't slight you by not directing questions to you.

**Ms Murdock:** Not at all.

**Mr Tilson:** They have asked in the statements, and I guess it's specifically with respect to paragraph (a), which I'd like you to comment on, at least from an administrative point of view, because they're questioning whether it will work:

"We see this limitation as a shocking departure from what we consider to be the essential nature of the original Pay Equity Act. The value of female-to-female job class comparisons, as described here, will be completely dependent on the integrity of the proxy organization's pay equity process. As we continue to assume this government's intentions are honourable, we ask you to reconsider. Otherwise, proxy comparisons will result only in entrenching any gender-based inequities not addressed by the proxy establishment."

Dealing with that, I think it's an excellent point and I would like some reassurance from you, who've perhaps had some assistance in preparing this legislation, that their fears are unfounded, or perhaps the government may want to reconsider some amendments.



**Ms Evans:** The act requires all employers who have pay equity plans to evaluate their female job classes and male job classes on the basis of skill, effort, responsibility and working conditions. That is the basic rule of the law which the act sets out. One has to assume that employers and bargaining agents and employees will observe that rule of law.

**Mr Tilson:** As I understand this delegation's question, given the position they're in—I don't mean to put words in your mouth. I maybe should ask you to clarify what you mean, but I believe you're saying that, with the wording that's being suggested in the legislation, it's impossible to do what is being suggested, to adequately protect you and, to use your words, it could result in entrenching gender-based inequities.

**Ms King:** We're not certain without seeing the regulations exactly what information will be available to us on the part of the organization with whom we would be seeking to proxy, and if we didn't have sufficient information, we wouldn't be in a position to assess the integrity with which it had conducted the pay equity process. That's where our concerns are arising.

**Mr Tilson:** Mr Chairman, I realize I'm unfair. I don't mean to be unfair to staff, and maybe at this time I will ask the parliamentary assistant. This question is something that certainly gives me great concern. Women's groups want some certainty. They want to know where we're going. The difficulty is, should it be left to regulations or should this particular area be put right in the legislation as opposed to being left to regulation? No one knows what this means.

**Ms Murdock:** On Monday the ministry submitted the schedule on which under "Counselling, referral and accommodation services....shelter for battered women," the proxy group that they would be going to would be "municipality providing accommodation services." It is included under there. But I would also point out that in terms of funding—I understand the problem—there has been no reference within the submission, except at 21.15, but under 21.16 they can join together to form groups to negotiate their proxy plans as well.

**Mr Tilson:** I'd like you to stay specifically on this.

**Ms Murdock:** I don't think it should be done legislatively, because things change. Legislation is difficult.

**Ms King:** Is the list available to us now?

**Ms Murdock:** They were submitted, so yes. You should be able to get them. I would guess she'd have to photocopy them for you.

**Ms King:** Do you know what would happen in the event that you were located in an area where there was not a municipally run hostel service?

**Ms Murdock:** The next geographic area. That's also under 21.16.

**Mr Tilson:** This is, Mr Chairman, a question which I asked the staff when they gave their original presentation, that there are going to be groups such as those that are before us right now who are going to come to—they may not come to this committee, but they're going to be there and they're going to say: "What the heck is all this about? What do we do?" My question was, "What type of educational program is being put forward?" and with all due respect to the minister, I

don't think he adequately answered that question. Perhaps you've had time to reflect on that.

**Ms Murdock:** That's a different part to the same question. The Pay Equity Commission has officers available to go and explain to any requesting group that wants even just simply information that isn't necessarily going to even set up a pay equity plan, just to be involved and to know what it's all about. They will go and assist.

Also, in the organized setting, many of the unions, as we've seen here, have their own pay equity ad hoc committees that will go and explain to their own membership, and in some instances will explain to non-union membership, how the pay equity plan, certainly on job-to-job and PV, and now proxy, will work.

But the other thing is that then you still have the legal aid people, where we have the pay equity advocacy workers, who are now included under the legal aid plan, to assist for the unorganized groups as well. I know that your group is only one third organized, but the other two thirds do have those other options. So there are avenues to go and get information.

**Ms Don:** I think one of the problems we've encountered—and we have done this. We have sought information from the commission, from Peel, from the coalition etc. One of the big problems we keep running into is that very few people understand what a shelter worker in fact does. We don't fit in comfortably with most other job descriptions, because we're so many-faceted. You're not just a front-line shelter worker; you're also a public educator, you're a counsellor, you're the whole gamut. You have to have some legal expertise, you've got to be able to do fund-raising etc. I think this is one of the big problems we're running into. People say, "Give us a job description," and we run to eight pages.

**Ms King:** To fully describe it. There are two points as well. Originally, when we anticipated the pay equity legislation, we continued to expect it to be as it had originally been designed in our estimation of things, that we would be comparing to male jobs, not female to female in other establishments. So that's one of our—

**Ms Murdock:** When it's my turn, I'm going to ask you—

**Ms King:** Yes, okay. Then the other piece was that when I'm thinking about this comparison to the municipally run hostels, I'm wondering if in fact, when we look at and do our assessments, what if we find that our job evaluations don't show those jobs to be similar in the outcome?

**Ms Murdock:** It wasn't municipally run hospitals, I don't think. She's got a photocopy.

**Ms Fraser:** It was hostels.

**Ms King:** Did you not say "accommodation"?

**Ms Murdock:** Yes. I thought you said "hospitals."

**Ms King:** No, "hostels."

**The Chair:** I'll allow Mr Tilson one further question.

1430

**Mr Tilson:** I invited Mrs Murdock to participate and she's done just that. I thank you, although I will say that we have just seen, in this last exchange of comments between the delegation and yourself, that the bureaucracy in this thing is

just going to be awful. It's going to be awful to administer and it's going to be awful to understand.

**Ms Murdock:** That's why it's taking it so long to get here.

**Mr Tilson:** I'm just telling you that these people have come in all innocence and are having a difficult time understanding it. Yes, I was out of order in making heckles about understanding it—

**Ms Murdock:** I was out of order too.

**Mr Tilson:** —but it's a serious problem. Don't take offence, but how are groups such as yours, let alone me as an elected representative, going to understand all this stuff?

One final question to the delegation: Your last sentence probably sums up one of the major pieces of criticism that can be given to this legislation, particularly with an organization such as yours, which states in conclusion, "To state our case most plainly, we wonder if the cost of achieving pay equity will prove to be greater than the results." That, of all the statements you have made today, is a concern I think both opposition parties—and maybe the Liberals will speak for themselves but certainly our party—have with respect to where we're going in this thing.

Can you tell me a little bit about your budgets? We start talking about the 1% cap. Can you tell me a little bit about that?

**Ms King:** We're expecting 0% this year. We got 0.5%; we're expecting 0%.

**Mrs Caplan:** There's a 1% annual obligation to achieve pay equity. That's what he's referring to. What's the annual average budget?

**Ms Don:** Many shelters are now facing \$100,000 deficits at this point. In fact, I was talking to a shelter director yesterday afternoon who said, "I don't know how we're going to do this without laying off half the staff." In all fairness, I've been doing this now for the past 20 years and I've sat in this room with both the PCs and the Liberals and this time with the NDP, and we don't know where we're going to go from here. It really hasn't made a whole lot of difference who we've been addressing. The problem's been there all along. I think it's a basic problem of not understanding the necessity of these services. I can't state that clearly enough and I really feel that is the big problem.

**Mr Tilson:** I understand you're trying to do your job and you're not trying to favour any particular political party; I understand that. But I think you've just said it in a nutshell, and I think it would be most appropriate to hand the floor over to Mrs Murdock and allow her to ask some questions.

**Mrs Caplan:** Can I ask one question, since he has a couple of minutes of time left?

**The Chair:** No, he doesn't. He's gone over now.

**Mrs Caplan:** Oh.

**Ms Murdock:** Yes, it's an interesting thing, because you're right. I heckled back and I do apologize for that. It's just that sometimes we can't let something just remain without any kind of response. It is confusing language, although the concept of proportional value and proxy has been discussed for so long now. I know that women who have been in the discussions and have been talking about it within their

own groups have an understanding of how they have to make those things. I know you're concerned particularly with proxy, besides the other issues that have already been discussed—is the fact of female to female.

I know that what it comes down to, and I think Ms Poole said it, is the integrity of the system used by the proxy comparator group. But the thing is that if you're going to have any kind of system at all in which this can be used to raise women's wages up to some kind of parity, you have to have something there and at least this a beginning. It's certainly not the end, by any stretch. That proxy comparator group has already gone through its whole pay equity plan and based that female job classification wage on a male group. You would agree with that?

**Ms Don:** Yes.

**Ms Murdock:** So that even though it's female to female, it nevertheless has at one time been compared to the male classification. And I know, because your particular job requires so many different kinds of skills, that it's going to be difficult, there's no question, to find a comparator group that's going to fulfil all those; there are about a million. Women have been doing this since fire was invented. We're capable of doing everything, and we usually do.

Just to clarify something, you did get the down payment?

**Ms King:** No, not yet.

**Ms Murdock:** But you are getting it before the end of this year?

**Ms King:** Well, we're not sure. Are we?

**Ms Don:** We'd have to ask.

**Ms Murdock:** Okay. You did say you wanted to ask some questions so I should leave some time for you, but yes, the minister did say on Monday that the down payments would be paid by the spring, which means it has to be, obviously, allocated before the end of the fiscal year or otherwise it won't be in the next budget. He did state that on Monday, so just to ease your minds a little bit, you'll get—I don't know how much that's going to be.

**Ms King:** Or how it's coming.

**Ms Murdock:** I wanted to ask about page 5 of your presentation, the paragraph before number 3: "It seems to us that the essential nature of pay equity...is minimized or restricted by these limitations." I'd like you to explain that more to me.

**Ms Fraser:** I'll try. Our organization has always been concerned with proxy as a method for achieving pay equity, when you compare yourself to another women's group that has achieved pay equity and apply that group's adjustment. It seems like sort of a pat formula to us. We understand that pay equity is only meant to address gender discrimination in wages, but there are other issues that come into rates of pay that other groups enjoy that are not strictly gender issues but where it could be argued that they are; for example, access to unionization.

When we're told even from the outset that there is a group that we will be able to use in our proxy comparisons, it seems to us that this is just a formula that's being used and that in fact pay equity is just kind of pat formula and it's going to be achieved in that way. I think many of us felt that



job-to-job comparisons between even predominantly female job sectors with male job sectors that shared much in common with them would have been a more equitable way to go than the simple formula of comparing yourself to another women's group that has achieved pay equity.

**Ms Murdock:** Job-to-job has already—obviously, in 1987 with the Pay Equity Act—

**Ms Fraser:** But only if there are male comparators in your workforce.

**Ms Murdock:** Yes, right.

**Ms Fraser:** We don't have that option.

**Ms Murdock:** No.

**Ms Fraser:** But to some extent, why would it be different if we had that option, if we have to go outside of our immediate workforce to look for a comparator or if we just conveniently happen to have one within our workforce?

**Ms Murdock:** Are you suggesting, then, that rather to a female comparator, it should be to any comparator?

**Ms Fraser:** There are job classes that are considered male job classes that shelter workers might be able to compare themselves to. I'm thinking of, for example, the police. There are many similarities between the kind of work the police do and the kind of work that shelter workers do, given certain things like working conditions, degree of safety, the front-line, crisis kind of facilitation that goes on all the time, shift work. There are many, many areas where one could compare, where someone who is from another group that is just applied to you—I won't say arbitrarily, but that is applied to you—may not be an accurate fit. So in that way, pay equity by the proxy method feels a bit kind of tokenistic to us.

**Ms Murdock:** Hmm. Okay.

**Ms Fraser:** That's been a complaint we've had for a long time.

**Ms Murdock:** Correct me if I'm wrong; I may be putting words in your mouth. I hear you saying to me that you don't like the classification under the schedule that you have.

**Ms Fraser:** No, I'm not just saying that.

1440

**Ms Murdock:** You prefer to be compared to a police officer.

**Ms Fraser:** I'm not saying that, necessarily. We just found that out today. We didn't like the whole proxy method that was in before.

**Ms Murdock:** This is not new, though; it has been discussed, the concept of comparison to a municipal—

**Ms Fraser:** That's true.

**Ms Murdock:** You may have just found out that it was—the schedule was submitted—but this has been discussed with you before.

**Ms Fraser:** Yes, that's accurate. But we also have concerns just about that whole method. That's something we're seeing here today and we've said all along that the method just seems to be kind of haphazard, if you will, or easy, convenient rather than—

**Ms Murdock:** Right. I hear what you're saying. The problem with all legislation is that it has to apply to the whole

thing. Basically, what you're asking is for specific kinds of professions, that they have to be considered differently, and it's very difficult to be specific like that within any piece of legislation. But I have heard what you said.

**Ms Don:** It's not the first time we've said it either.

**Ms Murdock:** No. Well, I haven't heard it.

There was one other area in your presentation that I wanted to—the injection and it has been mentioned, in terms of the injection of funds that you're requesting for the purposes of finding out which proxy comparator group you might use or otherwise. Under the Pay Equity Act itself no money was allocated to any groups to do that, none under proportional value for some of those groups that have already done so and then now, and none for proxy. I'm wondering, I know you've explained that you don't have the persons, but given that under section 21.16 you can group yourselves together to try to save costs and find your proxy comparator by joining together similar groups, whether or not that would ease some of your concerns.

**Ms Don:** We still need to have the bodies to do it. I think that's what it comes down to. Right now I'm the only paid staff in the organization. These two women are here having taken off time from their own work that they have to make up when they get back. It's a simple matter of bodies. How much volunteer work can you do in 24 hours a day?

**Ms Murdock:** It's just like a volunteer board of trade here.

**Ms Don:** There's a limit to the amount they can do. I think that's the big problem right now and it's not only—we're preparing briefs for the budget hearings etc and we're constantly doing this kind of stuff. The pay equity committee's not the only one; we've got about 12 other committees and volunteers that are needed all the time.

I think the reason we feel this is a particularly important issue is because it's going to affect us for a very long time. Presumably, once pay equity is achieved it's going to make a big difference to all of us eventually, for a long time to come. It's because this is the big opportunity we have.

**The Chair:** Thank you, Ms Murdock. Ms Don, Ms King and Ms Fraser. On behalf of this committee, I'd like to thank you for taking the time out this afternoon and giving us your presentation.

#### UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

**The Chair:** I'd like to call forward our next presenters from the United Food and Commercial Workers International Union.

Good afternoon. Just a reminder: You'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks slightly shorter than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Mr Brian Neath:** My name is Brian Neath. I'm assistant to the Canadian director representing the Ontario workers. With me are Ralph Ortleib, an international representative, and John Tremble, a researcher for our national office.

We in the United Food and Commercial Workers Union would like to thank you for this opportunity to appear before this standing committee dealing with Bill 102 and Bill 169. Seeing that Bill 102 will have the major impact on our members in Ontario, we are going to confine our remarks solely to that bill and not deal with Bill 169 at all.

We would like to commend the Minister of Labour and his government for bringing forward these amendments to the Pay Equity Act, which will extend the benefits of pay equity to more than 400,000 women who are presently excluded. In particular, we support the government's commitment to ensuring that pay equity applies in predominantly female workplaces where no male comparator job exists. This is a tremendous advancement towards the goal of eliminating wage discrimination. We are also pleased by the proposed workplace postings which will ensure that people are aware of their rights under this legislation.

We, United Food and Commercial Workers Canada, are Canada's largest private sector union, representing over 180,000 workers across Canada. Over 50% of our members are women. Our membership is employed in more than 20 sectors of the economy, including retail, service, meat packing, food processing, brewery-beverage production and distribution, fishing, general merchandising, health care, shoe and leather and banking industries. UFCW Canada represents more than 70,000 men and women in Ontario. Also, as a sideline, I always like to indicate that we also have members who work in funeral homes and in hospitals.

The labour movement in Canada strongly supports pay equity. UFCW of course is no exception. UFCW Canada has conducted extensive research and consultation on pay equity. When Ontario's Pay Equity Act became law in 1989, UFCW Canada set up a pay equity task force to develop a response to the new legislation and to ensure that similar standards of evaluation were adopted by all locals and sectors of our organization.

The result was the development of the Neutralizer, a computerized pay equity system with a built-in gender-neutral job evaluation system. This system was designed by job evaluation experts from New Literacies Inc working with the UFCW task force. Using an unbiased and systematic process, the Neutralizer generates a report on pay inequities and shows exactly how the employer can make pay adjustments in line with existing Ontario legislation.

The Neutralizer has proven to be a highly effective tool in implementing pay equity, and to date, UFCW Canada has sold the Neutralizer to approximately 100 employers and is in the process of implementing the program in numerous other workplaces. Also, we believe that because of this particular program we've been able to avoid any long and hard battles at the tribunal.

In Bill 102, the government has decided not to include women working in private sector organizations employing fewer than 10 employees. UFCW Canada believes this exclusion should be reversed. Numerous studies document the role of women in the future labour force. In its April 1990 report, Ontario's Labour Market: Long-Term Trends and Issues in the 1990s, the Ontario government stated that the participation rate of women is projected to increase throughout the 1990s and that women will account for nearly two thirds of the total labour

supply growth during this decade. By the year 2000, women will represent 48% of the workforce.

In addition, the Economic Council of Canada's 1990 report, Good Jobs, Bad Jobs, which examined employment in the service economy, found that part-time employment has risen dramatically in the 1980s and accounted for at least 30% of net job growth in Ontario. Further, involuntary part-time employment accounted for 24% of all part-time employment. The report continued:

"Most part-time workers are employed in the traditional service subsector, and the overwhelming majority are either young or female (or both). By comparison with their full-time counterparts, part-time workers are much more likely to be short-term employees, to be non-unionized and to be employed in very small firms. They are less likely to be covered by a range of employee benefits, and in general they earn less on an hourly basis than full-time employees performing similar kinds of work."

There is a clear need to protect workers, particularly women, working in these conditions. Women should not be denied coverage under the legislation merely because they work for a small firm in the private sector. The act should be amended to allow women working in organizations employing fewer than 10 employees the right to make complaints before the commission.

We have decided, instead of having one person ramble on, that we're going to take turns. I pass it to John to deal with the next section.

1450

**Mr John Tremble:** I want to discuss some of the changes we're proposing for the legislation. Ralph Ortleib is going to talk about the proportional value comparison method, as well as the proxy method of comparison.

With regard to the preamble, we feel that women should be given the opportunity to launch a complaint of discrimination under the Pay Equity Act, and we're suggesting that this be recognized in the preamble to the Pay Equity Act. We've indicated the wording on page 4 of our presentation.

We also believe that subsection 8(5) of the act, which deals with the limitation regarding maintaining pay equity, should be eliminated, simply because this would be a step backward. We would rather see the bulk of the legislation provided for in the actual legislation itself as opposed to being done through regulation, which is relatively easily amended by the government of the day.

Regarding subsection 13(7) of the act, dealing with pay equity plans exception, we recommend that this section should not be amended as proposed by the government. While we understand that the government is in a dire financial situation, we feel it has to at least set an example and make some effort to implement pay equity as it's outlined in the legislation.

With regard to section 14, dealing with changed circumstances, we recommend that a new subsection 14.2(1b) should be added, using the same wording as in subsection 14.1(7). Unionized establishments should have the same sort of legislation as non-organized workplaces so there won't be any discrepancy between unionized and non-unionized workers.



**Mr Ralph Ortleib:** In relation to the proportional value method, we agree in principle. We think the inheritance of this government was a plan that was flawed, because in many instances a comparator was not available. Under the previous legislation, tens of thousands of women were denied increases they truly should have had, and we want to commend the government for bringing in the amendments. The only difficulty we have with it is really minor. When you bring in that legislation, we don't think the time lines of the adjustments under the act should be any different from what the government had originally proposed. We don't think the government should back down on that.

In the final analysis, we have some difficulty trying to understand why we would need a representative group of male jobs. We say that any male job class should be a comparator. We think the compensation adjustments in that area should start on January 1, 1992.

I want to make a couple of comments, because I've been involved with pay equity from the start. My concern and my union's concern, quite frankly, is not so much for the organized workers. Let me be very candid. We've had excellent cooperation from the Pay Equity Commission; we think it has done a commendable job under flawed legislation. We also think the education that has been proposed and has been done by the Pay Equity Commission has been excellent, under the circumstances. We have been able to use the commission for advice, for education, for whatever we needed to make the present act work. They've been very good in that area, and we commend them for that.

We wonder, though, under the new legislation, whether those people in non-organized plants—I really have no way of knowing how, without enforcement legislation, non-organized women are going to benefit from any of this. I'm prepared to say—couldn't prove it; it can't be disproved—that under the present legislation and under the new legislation, when it's implemented, of the women in those non-organized plants and shops, and once you take away the workplaces with fewer than 10 employees and say they're not covered, I would say we'd be lucky if 1% of the women get any benefits out of pay equity, even as amended.

We think those people desperately need it and we think the legislation should put the Pay Equity Commission in a position where it advocates for those sorts of people. Trade unions normally don't need the advocates because we're advocates, but for those people who are non-organized, I dare anyone to prove it wrong that those non-organized women gain anything from pay equity. Even though we implement the proportional value method, I fail to understand how, without express moneys, express assistance, express help from the Pay Equity Commission to act as an advocate, to protect those women, to see that they get what they're entitled to under the legislation, they can benefit. I really don't know of any who will. And knowing human relations, I don't know of any of those women, on the lower end of the scale probably, who would be in a position to demand their rights under the legislation, unless there is an advocacy they can demand it from to act on their behalf.

Then we get to the next stage, the stage of when we get to the commission. This union's been fortunate: We've never had to deal with a tribunal, the legalistic, the time, the money

and the frustrations that come out of that, vis-à-vis the nurses. We just wonder, even with the legislation—because there's no change in the administration language of the thing—how anyone's going to really benefit, except perhaps the proxy, if we ever get to the end of the line on the proxy end of it and make a determination of who the comparator's going to be.

We've recommended some changes to the proxy end of it. We think the government should amend the sections, especially on adjustment, because as we understand it, the proxy is going in there to attempt to look after the lowest-paid of the females in the province of Ontario. Fully understanding the amounts of money involved and the pressures on the government, we don't know how we can justify saying to them as a group that we're going to start these payments in 1995 instead of 1992. We think the first adjustments should start in January.

The proxy method of evaluation or comparison is intricate, to say the least. As we understand it, and again in conjunction with proportional value, before you can get either, you must do the male-female comparator. Our union doesn't have any difficulty with that. If we're going into proportional value, then let's go into proportional value. There are obviously no female comparators where the proxy comes into effect, so instead of doing this, let's go and find the comparator.

And the whole question of key female jobs: If we're going to compare key female jobs, as we understand it, "the female job class in a seeking employer's establishment having the greatest number of employees in the establishment," or, where there is a bargaining agent, the female job class inside the bargaining agent, the female job class inside the bargaining unit, we recommend that the legislation be changed to clarify the key female jobs.

1500

Again, when we get outside, when we go looking for that comparator, the section deals—if we can't find a similar job class, and this present language is highly subjective, unnecessarily complicated and would require extensive work by proxy organizations, likely resulting in long delays.

UFCW Canada believes this section should be amended to allow the seeking organization to go to another proxy employer in the same geographic area, and if no comparators can be found in the same geographic area, then the seeking organization can go to the next geographic area. For that purpose, we've put here some suggested language for amendment changes to do that.

The whole question of obtaining information from potential proxy employers: I would think it's going to be extremely difficult if you're dealing with small employers who don't have the organizational charts and the sorts of sophisticated information that's necessary to do this; again, long delays. We just can't understand why that's in the legislation. We think it should be that a request for an organizational chart should be where one exists. If one doesn't exist, how do you get one? Do you have that seeking organization go out and go to the expense of putting together a chart? We just think that's bureaucratic and very complex and would likely delay the process.

We think that where the proposed legislation would require proxy employers to group jobs in a similar female job class, this would create a subjective process and we don't think that's necessary.



The question of confidentiality: As I understand the legislation and as I understand where the money's coming from, it's public information. We can't understand, in dealing with employers, the whole question of confidential information when they're putting out potential proxy employers. We just think that is not necessary and should be deleted.

Again—we want to get back—we think the compensation adjustments should take place in 1993 and that the full plans would be implemented by January 1, 1998.

We further think—and this is very important—that where the act says that, "Hearing tribunal settlements are binding on parties," this section should also state that all settlements should comply with the act, as follows: "No employer, employee or group of employees or the bargaining agent can waive any rights or disregard any obligation under this act."

We are inundated with calls from small employers who are unorganized and people who are unorganized. All at once a document goes up on a wall. A settlement is arrived at. There have been no discussions, a deal has been cut, and in many cases an officer comes in and gives an order—and we've had a few of these—and then you have to negotiate around the order and the order does not comply with the officer's order.

Let me give you an example: An officer comes in and you're having a difficulty. Our neutralizer theoretically can say that the employees would get \$100 a week. The officer comes and says, "No, it's not \$100; we're ordering \$90." She orders the \$90 and then you end up four or five months down the road agreeing to \$15, or trying to agree to \$15.

We think that where the gender-neutral plans have determined what the settlement should be and the order's given by the officer, that order can't be changed without compliance by the tribunal.

Parties to the proceedings: We have a real concern about the litigation end of it. We understand that more and more pay equity plans are going to the tribunal and going to litigation. There is an attempt by people to become parties to the hearing. We think that the unions and the employers stand alone before the tribunals, before the hearings. Besides all the lawyers we've got in there, we don't need the consultants. We think the law should be very clear and the consultants should be excluded, and the law should be changed in that fact. We want to commend the commission up to this time, under tremendous pressure, to keep that out.

Our last and most questioning thing is where the proposed act talks about posting of plans. In many instances, our collective agreements supersede the terms of the Pay Equity Act. If we have collective agreements that don't allow posting except with the express provision of the employers, then it's sometimes extremely difficult for us to do what we want and to put those plans up where employees can see them. We think the employer should be required to post those plans in all establishments where they come into force.

We want to tell you that we don't think a pay equity officer's decision should be revoked without a hearing of the tribunal.

There are some other minor things that we want to leave for your reading and my colleague will finish it up.

**Mr Neath:** In conclusion, we are pleased to be part of this process and we want to congratulate the Minister of Lab-

our in tabling the amendments to the act, which will extend pay equity benefits to thousands of women who are presently excluded. We also strongly support the government's commitment to ensuring that pay equity applies to predominantly female workplaces where no male comparator job exists. These represent important changes which will eliminate future wage discrimination.

However, we have some reservations about Bill 102, which we feel takes away from the Ontario government's commitment to the women in Ontario to end wage discrimination. In particular, the implementation of pay equity should not be set back as proposed in various parts of Bill 102. Further consideration must also be given to amendments which would allow women working in organizations employing fewer than 10 people to have the right to make complaints before the commission. This is a crucial point, especially for our union, given the current job creation in small private sector organizations, and we are opposed to various amendments to Bill 102 which leave issues to be dealt with by regulations.

We wish to commend the Ontario government, particularly the Pay Equity Commission, for the excellent work it has done in its educational programs to make people aware of the need for pay equity. We have an excellent relationship with this body and find the commission's publications and educational conferences are extremely beneficial to the community. We continue to be prepared to work with the government of Ontario and other groups to develop and implement effective pay equity legislation that will benefit the people of Ontario.

1510

**The Chair:** Thank you. Each caucus will have about 10 minutes for questions and comments.

**Mr Arnott:** In your summary you outlined in very brief terms your specific recommendations. You said, "Further consideration must also be given to amendments which would allow women working in organizations employing fewer than 10 people the right to make complaints before the commission."

I assume you'd made that suggestion known to the government in prior consultations at some point. Why do you suppose the government did not respond to that particular request of some people?

**Mr Neath:** I guess that's a difficult question for us to know, exactly why they didn't respond that way. I assume that question would be raised to them and they would give you the answer to that question.

**Mr Arnott:** You've no idea?

**Mr Neath:** No.

**Mr Arnott:** Nothing to say?

**Mr Neath:** No.

**Mr Arnott:** I suppose the goal of initiatives such as pay equity, employment equity, we're trying to take our society—I suppose the government's trying to lead our society into an era where there is no discrimination based on gender of any sort. That's correct?

**Mr Neath:** Yes.



**Mr Arnott:** Do you ever wonder if the values and the attitudes in society are going in that direction irrespective of what government does?

**Mr Neath:** My response would be absolutely not. Even on something like this or any legislation on anything—take health and safety as another prime example—leave it to the private sector and it will not do it.

**Mr Arnott:** I don't mean the private sector, I mean people in general.

**Mr Neath:** But who are the people in general? If the public sector basically is the government, and the private sector is basically the business community, then who are you referring to?

**Mr Arnott:** I mean all of us in this room and everyone in the province. Are we not on our own, of our own volition, understanding that gender discrimination helps nobody?

**Mr Ortleib:** We as a union feel, and I personally feel, that left to their own—the time has come for equality in this province, no question about that, and there's no question that there are groups and people out there who have various reasons for not wanting equality. I think, as difficult as it is in contemporary times now, with the economic situation like it is, that a government which takes the lead is extremely valiant and has to have a lot of courage to lead in that area.

I think that the present government, as difficult as it's going to be, has to start going down that road, not only to pay equity but also to employment equity—to equity period. The days of the redneck, the John Birchers and the Ku Klux Klan and all of them are long gone. They're still there and they make a lot of noise, but I think people in the province of Ontario generally have concerns, especially because of the economic situation. But I think that down deep they understand the question of equality, not only pay equity but the other equities as well.

Human rights commissions across the country are now starting to impose some rather radical equality questions that lead to controversy. The old question is that when you're heading into changes, it's agitation or stagnation.

I think that this government, as difficult as it is, is going in the right direction, and I think that other political parties that yell in the background are doing a disservice to the eventual equality of the people of Ontario, because Ontario is a big province and whatever happens here is going to spread across the country eventually. It's not going to happen tomorrow. Unfortunately, employment equity is not going to happen tomorrow. I wish that it would. I really, truly do.

True pay equity should happen tomorrow. It's not going to happen; we're realists, we understand that. But that the desire is there and that people are putting themselves into groups to support issues like this, I think is commendable and I support the government's actions in those regards, as difficult as it's going to be.

**Mr Arnott:** I don't disagree with you that true pay equity and true employment equity are going to come about. I guess what I'm saying is, in my limited experience on this earth, I've often found that people are ahead of their governments in many ways in terms of their attitudes. I guess what I'm saying is that in my limited experience on this earth, I've often found that people are ahead of their government in

many ways in terms of their attitudes. I think attitudes are changing with respect to gender in our society, totally irrespective and independent of what the government is doing.

**Mr Neath:** If I can respond to that, I think if you take a look at the stats you would be proven wrong. I think that if you take a look at the employers who don't have to introduce any type of pay equity and/or employment equity, those issues aren't there.

Take a look at the stats just released not long ago from I think Stats Canada that said that women are only at 70% of men's rate of pay. This is 1993 and we aren't going anywhere. We're not going to go that far or get to where we want to go unless there's some form of legislation that will drive us there.

**Mr Arnott:** Yes, it had increased from 1990, though, the average women's salary.

**Mr Neath:** Likely because of the pay equity inside the public sector as opposed as much to the private sector, although some of that may be related to the fact that there's pay equity legislation in Ontario and other provinces as well.

**Mr Arnott:** I have no figures to quantify what I'm about to say, but I find in my own personal experience and knowledge of people that there are increasing numbers of young women going into traditionally male-dominated fields like engineering and some of the higher-paying ones, engineering, medicine, the law. I would suspect that those people would have an impact on your figures as well over time and probably have already.

**Mr Neath:** Likely because they have been told through some form of legislation that they have to be paid equal to the men's job. If you're talking about an engineer, I'm assuming that if you're talking about equal work as opposed to equal pay for equal work, then that's been around for some time.

**Mr Arnott:** Yes, but that would have an impact on the numbers.

**Mr Neath:** I don't think so, but it's tough to say when we don't have the numbers in front of us.

**Mr Arnott:** Thank you.

**The Chair:** Mr Tilson, do you have any questions?

**Mr Tilson:** No.

**The Chair:** Mr Winninger.

**Mr Winninger:** I'd like to thank you for your very clear presentation. You expressed a concern earlier that unorganized workers would have great difficulty in enforcing pay equity, and the Pay Equity Commission itself, which made a presentation this morning, touched on the same point. Of course, they acknowledged the existence of the Pay Equity Advocacy and Legal Services clinic, which I'm sure you're familiar with, but they were concerned that it wouldn't be able to meet the needs of all the unorganized women out there and seems to be focused more in the Toronto area.

The Pay Equity Commission suggested that we legislate standing for the commission before the appeals tribunal because it asked for standing and was turned down.

**Mr Ortleib:** We don't have any difficulty with that.

**Mr Winninger:** No. What about standing for unions such as your own? I don't know if it's possible, but let's say



an individual worker is somewhat cowed by the whole idea of going to the appeals tribunal and is reluctant to do that. Would you like to see your union have standing before the tribunal even if the individual person who should be the applicant isn't there?

**Mr Ortleib:** No. We say that if we're advocating consultants aren't there, then we shouldn't be there. If we want someone, we'll hire lawyers to do that sort of thing. But to have consultants—I don't know whether I'm getting into ground I shouldn't be covering but the thing that sickens me as a pay equity practitioner and an employment equity advocate is the—the plans that come out, those bloodsucker plans that come out, that are sold, they don't only suck from the workers and the people who should benefit; they suck from the employer too tremendous amounts of money to sell them a plan that is not gender-neutral, that's deliberately designed to circumvent the legislation, both pay equity and employment equity. The employment equity plans are out there now. We can sell you a plan for \$100,000 that guarantees you nothing changes.

**Mr Winner:** How do you get around that abuse of the system?

**Mr Ortleib:** They want status at the board to defend what they're doing. The thing that just recently, over the last year or so, has started to concern me is here we have a tribunal that says to a group of workers or to an employer, "Your plan is not gender-neutral." Do you understand that? I won't mention the names of the plan. You know them as well as I do. The next day that plan is implemented in another institution, because the law just covers that application. Do you understand what I'm saying? We think that's criminal, we think it's horrible and we think it's an injustice to the worker.

Somewhere governments should bring in legislation that defines that if a plan is proven to be non-gender-neutral, unless that non-gender neutrality is taken out of the plan, it can't be used to do things to other workers, even our own. If our plan is proven to be non-gender-neutral and doesn't comply, tell us and we'll amend the plan. But that doesn't happen.

1520

We just think that the Pay Equity Commission should have a stronger voice in determining gender neutrality. The commission has its own plan, a 12-point plan, an excellent plan. If we get in an argument with an employer, and we don't, they send in one of their officers and they start—this is again aggravating to me—from their excellent 12-point plan and go downwards. If that gives the true intent of justice to female workers, then I'm really in a different world.

I understand fully that this is an inherited plan from a previous government, and I understand that changes have to come slowly but, Jeez, when people are out there doing what they're doing with some of their plans, at that point in time governments or tribunals or whatever should say: "That's enough. This legislation is to do a certain thing, and it's not doing it the way you're proposing it."

**The Chair:** Thank you, Mr Winner. Ms Murdock?

**Ms Murdock:** No, I don't have any questions, thanks.

**The Chair:** Ms Poole.

**Ms Poole:** Thank you for your presentation today. You've raised a number of issues which have been quite helpful to us. I'd like to raise a couple of points that were covered in your brief. The first is on page 4, where you've talked about the original subsection 13(7) of the Pay Equity Act and the fact that Bill 102 is amending this to say that the public sector achievements in pay equity don't have to be realized for an additional three years now, till 1998. Obviously, from your comments, you would like the original timetable as set out in the 1987 legislation for the public sector to be adhered to.

There are two points I'd like you to address. First, do you think that delaying pay equity for three years for the public sector will in effect reward employers who didn't do what they were supposed to do when they were supposed to do it? Second, could you talk about the impact it would have on women's pensions if that pay equity is delayed and in fact their pay hasn't changed in that period.

**Mr Ortleib:** To answer your first question, yes, it is justice delayed. We believe strongly that the implementation of the payments for pay equity shouldn't be delayed. We understand that any government, including yours if it were there, would be doing probably the same thing because of the economic conditions, and we'd be saying the same thing to you. We think that taking the money out of there—it may come back in taxes or some other form; I'm not an economist, so I don't know that. But those people were promised, first by the previous government, that certain things were going to happen. It didn't happen for them.

**Ms Poole:** For example?

**Mr Ortleib:** What we're talking about here is the delaying of proportionate value.

**Ms Poole:** But the Liberal government did make an announcement in March 1990.

**Mr Ortleib:** I didn't see the legislation.

**Ms Poole:** Because there happened to be an election called in July, less than four months later.

**Mr Ortleib:** Well, I've got heartbreak for broken promises.

**Ms Poole:** You certainly would with this government, I must say.

**Mr Ortleib:** I mean direct broken promises. Here, the implementation's going. All we're saying is, accelerate it. Don't go backwards; accelerate it. They're cleaning up some flawed legislation. They're bringing in that legislation and they're saying, to bring that legislation in, because of the economic times, they don't have the money for it. We say, "Find the money."

I would want to toss a quarter to find out who was blamed for the flawed legislation. We don't like the delay. We don't think that it's beneficial to those people the legislation is supposed to protect. It's going to cost a billion dollars. That's a hell of a lot of money. If you say it real slow, it's a lot of money; if you say it fast, it's a lot of money.

We just think when you take that kind of money out of the pockets of the poor, the people who didn't get it in the first place, who were promised by another government they were going to get it and didn't get it, that they should not have to wait another three years for the implementation of that money.



**Ms Poole:** I'm just rather surprised at the tolerance of the broken promises by this government, who when they were in opposition said they would include under-10 employees, for instance, in pay equity, who said they would speed up the implementation of pay equity, not in fact take away from it.

This government, which as an opposition party said, for instance, that it was very critical of the Liberal government, which said that it was looking at, was considering whether the crown employees, that whole section which is included in Bill 169, and also section 2 of this legislation—I don't have any problem with you saying that the previous legislation wasn't perfect. It was compiled by humans, and I don't think we've ever had a piece of perfect legislation.

But I can tell you the statistics quoted by the Pay Equity Commission this morning showed that the legislation is actually working extremely well, and with the announcement in March 1990 that the government was going to go to proportional, that would have extended it that much further. But we've heard a lot of comments from groups that have come in that have been very supportive of the 1987 legislation and been very critical of the three ways in which this government has in fact taken women a step back in that same legislation.

**Mr Ortleib:** I can understand those sorts of criticisms; I really can. But on the other hand, we as the trade union movement look at \$350 million to \$370 million already thrown into the public pot by this government in a very short period of time. Then whatever happens because of outside influences, the economy goes down, we have a government that has the responsibility of putting this money in here, but where does it find a billion dollars? I can hear the opposition screaming out of every window in the Legislature if the legislation came in and that deficit jumped another billion dollars. I wouldn't want to be sitting on anybody's part in the government.

**Ms Poole:** But realistically, hasn't this government given with one hand by saying that they're going to extend proxy to the larger public sector—and they've said but they won't guarantee that they're going to help pay for this. Haven't they taken away on the other hand by then saying to the public sector: "We're not going to give you the pay equity we promised by January 1, 1995. We're going to delay for three years"? I don't see how women are that much further ahead. I'm sorry, but I think they've given with one hand and taken with the other.

**Mr Ortleib:** We know it's difficult. We don't agree with the money not being implemented, let me tell you that. But we understand, the practitioners in pay equity, how difficult the previous legislation was to deal with, and the previous legislation really caused the problems of the inequity that any government would have been faced with today. Any government that was in there, not just the government in power, would have had the hue and scream and would have had to understand the flaws of the legislation, try to improve that legislation and get caught on top of the fence.

1530

**Ms Poole:** I guess we'll agree to disagree on what another government might have done. I certainly would have been out there screaming front and centre if my government had done what this government is doing, and I would hope there'd be many of my other colleagues that would as well.

One other point I did want to bring up: You raised a very valid point about the proxy method of comparison, and one of the things you are unhappy with is that basically under the proxy plan adopted by the government it's—

**Mr Ortleib:** Proxy?

**Ms Poole:** Proxy.

**Mr Ortleib:** I lost part of my hearing fighting, so I have difficulty hearing.

**Ms Poole:** Sorry about that. I didn't mean to be that detrimental to you.

Under proxy, the government's plan that it's implementing would have female jobs compared to other female jobs, as opposed to female jobs compared to male jobs.

We had a presentation this morning, which I thought was quite good, from the Ontario Association of Interval and Transition Houses, which deals with the assaulted women's shelters in the province. They too were very concerned about comparing female jobs to female jobs and this is what they had to say. I wonder if you see this as a real problem.

"We see this limitation as a shocking departure from what we consider to be the essential nature of the original Pay Equity Act. The value of female-to-female job class comparisons, as described here, will be completely dependent on the integrity of the proxy organization's pay equity process."

In other words, if they're comparing to another organization that had pay equity so that the female wages have been upgraded, what the organization is now having to do is compare it to a process where we're not sure the integrity of the process has been observed. For instance, if it was a bad plan or it wasn't implemented properly with the comparator organization they're comparing it to, then it might in fact—I don't know if I'm explaining this at all in an articulate way, but what it would do is entrench gender-based inequities instead of resolve them. That was their point and I wonder if you think this is what will happen.

**Mr Ortleib:** I think they probably raise a valid point. One of my concerns, when we originally started to analyse this, was the whole question of comparing apples and apples. On the premise that the red apple had already been job-evaluated by a gender-neutral method and that—

**Ms Poole:** So to speak, and now the green apples—

**Mr Ortleib:** To a male or however, but they'd gone through the male comparison, and they're selecting a female comparator. Because the act says you take the lowest male in the classification—I've had no experience with it, but I think, when you do two apples, it could cause some inequities. I would think that. I don't know that, because we've had no experience with that at all, and we haven't, quite frankly, put our mind to the question you raised. If they hadn't had a good plan, or they hadn't gotten justice under the plan we picked as a proxy, then obviously the seeker is going to cause an injustice to the people he's looking for. If the legislation goes through like this when we're doing it, we'll be damn sure that wherever we go for a proxy, the proxy was properly done if the female-to-female comparator remains. You raise a valid point.

**Ms Poole:** That's good, thank you.

**The Chair:** Thank you, Ms Poole. Mr Malkowski, one brief question.

**Mr Malkowski:** Thank you. I would just like to make a comment. It's not really a question, but I would like to thank you for your presentation. It was pretty comprehensive and very well received, and your concerns are very valid, the ones you've expressed to us.

I do have some concerns about the comments made by the member for Eglinton, Ms Poole. Maybe she's finally admitting that the Liberal government made some errors when it was in office, that no one's perfect and maybe it's time to recognize that, and that we're all people and that kind of behaviour—there's always room for improvement.

**Mr Tilson:** On a point of order, Mr Chairman.

**The Chair:** Mr Tilson, on a point of order.

**Mr Malkowski:** —and legislation can always be improved upon. We have a commitment to improve—

**The Chair:** Mr Tilson has the floor.

**Mr Tilson:** Mr Chairman, are we going in another round?

**The Chair:** No, we're not.

**Mr Tilson:** I don't understand why Mr Malkowski was even recognized, quite frankly.

**The Chair:** A valid point, Mr Tilson. What I did this morning was I recognized Mrs Caplan, because there was still time left for her caucus for questions. What I'm going to do is allow some latitude. If you want to ask a legitimate question of the presenters, I'm willing to do that.

**Mr Tilson:** I'm not prepared to listen to a debate between Ms Poole and Mr Malkowski and that's where we're going to go.

**The Chair:** But if we're going to get into partisan politics when we go on a rotation, then I'll stop the rotation. You'll be allowed one attempt.

**Mr Malkowski:** I'm not finished. I would like to—

**The Chair:** No, Mr Tilson has a valid point of order. Mr Malkowski is making a comment about what another member has said and he's not questioning the panel, so I won't allow Mr Malkowski to speak.

Mr Neath, Mr Tremble and Mr Ortleib, on behalf of this committee I'd like to thank you for taking the time to come in this afternoon and giving us your presentation.

**Mr Neath:** Thank you very much.

#### NURSES COALITION FOR PAY EQUITY

**The Chair:** I'd like to call forward our next presenters, from the Nurses Coalition for Pay Equity. While they're coming forward, I would just like to remind the members of the committee that there is another group scheduled on the back page of the schedule, in case they didn't notice.

Good afternoon. Just a reminder that you'll be allowed up to an hour for your presentation. The committee would appreciate it if you would keep your remarks to less than an hour to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, would you please identify yourself for the record and then proceed.

**Ms Rita Schreiber:** I'm Rita Schreiber. I'm one of the directors of the Nurses Coalition for Pay Equity. We call ourselves N-CoPE.

**Ms Anna Giallonardo:** I'm Anna Giallonardo and I'm a member of N-CoPE.

**Ms Schreiber:** N-CoPE is a grassroots voluntary organization of registered nurses. We have members across the province in unionized and non-unionized jobs. Our members practise nursing at all levels and in all areas of nursing specialization, from bedside to senior administration.

N-CoPE's purpose is to assist registered nurses who are seeking pay equity. Our activities include a speaker's bureau, education and assistance for nurses, public education about the role of the nurse, and lobbying activities.

An example of the sort of thing we do with our members is that we had a 62-year-old woman who was a nurse-researcher who was employed by a large university. The university published its pay equity plan and it gave her a 47% wage increase. We read about that in the newspapers. Unfortunately, the next day she was told that she would not see this salary increase. Either her hours would be cut back to make the old wage or she could quit her job or she could be transferred to the hospital with which the university was affiliated. That hospital had not published a plan yet. We assisted her to negotiate a settlement which satisfied her and which we are not allowed to disclose because she hasn't disclosed it.

We welcome the opportunity to provide feedback on Bill 102. We believe it is a step forward. We have to admit, though, we're caught by surprise by Bill 102 because we were expecting these hearings to be about Bill 168. The consultation process that we participated in in Bill 168, we felt, was productive and full. We feel that Bill 102 lacks certain guarantees of rights that Bill 168 enshrined. Thus, we feel this hearing provides an opportunity to put the consultation process back on track.

Nursing is typical of women's work: It's invisible; we are undervalued and underrecognized; we work long hours in dangerous circumstances; and our work is only really noticed when it's not done or is done badly.

I'd like to differentiate nursing from other fields of health care. One of my colleagues summarized it best when she said, "I'm a nurse because when a patient died, the physician said, 'He died and there was nothing I could do,' but the nurse said, 'He did not suffer because I did everything I could.'"

Registered nurses are there 24 hours a day caring for people. We care for you when you are in the first and last stages of life, when you are sick and when you are vulnerable. Yet, as we heard on Monday, Ontario's 100,000 nurses receive 1.25% of the health care budget. In contrast to this, Ontario's 10,000 physicians receive 9% of the health care budget.

Research shows that public health does not improve with increased numbers of physicians. It does show, however, that having increased numbers of nurses does make that improvement. This is largely a function of the different roles and different skills and not within the mandate of this discussion.

A recent study by Statistics Canada that was released last fall showed that women working full time in health care received only 58 cents on the male dollar. In reviewing for this presentation, I discovered that in Leviticus chapter 21 in the Old



Testament there's a story about buying and selling male and female slaves. The female slave's work is worth 30 shekels, the male slave's work is worth 50 shekels. So not a whole lot has changed; we've still got that 60-cent dollar.

We recognize the financial difficulties this government faces. We realize that the transfer payments have been diminishing and that the business community is certainly doing what it can to discredit the government. However, it is our opinion that postponing pay equity payouts is a very false economy. Money put in women's hands is money put back into the economy through spending and through taxes. Furthermore, we have to be cautious to ensure that in times of financial crisis, we do not let our human rights erode.

1540

**Ms Giallonardo:** I just want to point out some particular concerns from our members and say that we work closely with the Equal Pay Coalition and share many of its same concerns. We have given you a fairly detailed submission, and I'm not going to repeat a lot of what's in there.

The first strong message we want to give you from our members is about Bill 169. We want Bill 169 and section 2 of Bill 102 withdrawn. Bill 169 and section 2 of Bill 102 deal with defining the establishment, that is, who is an employee of the crown. We feel that this is an attempt to limit the rights of workers by defining "employer" differently than the pay equity tribunal has already done. For nurses, the Haldimand-Norfolk decision was a very important one. We wouldn't want to see that undermined.

Another issue for us is women working in a workplace with under 10 employees. We urge the government to consider the decision to exclude women working in the private sector in workplaces with fewer than 10 employees. It would be unjust for the rights of women to be dependent on the size of their workplace.

We also work closely with the federation of labour. They suggested a change to the preamble, a section 1A to include the following:

"Employers are prohibited from discriminating on the basis of gender in the compensation of employees employed in female job classes in Ontario. All employees in Ontario shall be entitled to equality in compensation with male job classes."

We believe this strengthens the commitment to the intent of the act and also allows for the possibility of women in small workplaces to file complaints.

The other concern our members have is around the dates. We suggest that the government revisit the dates for full implementation under each method. The dates in subsection 21.10(1) under section 12 of Bill 102 should be, "first adjustments start January 1, 1992." Furthermore, we feel strongly that there should be a deadline for implementation of pay equity through the proxy method. Without such a cap, there would be no incentive for employers to implement pay equity at all.

**Ms Schreiber:** Our members feel strongly that money is not the central issue around pay equity. We are primarily concerned that our work be recognized and valued in accordance with our contribution to society. The work of the registered nurse is far more important than the tasks you may see us doing. Our expertise is in the thinking and evaluating of critical situations, something you will never observe with your eyes.

Margaret Mead once said, "You can judge a society by how it treats its vulnerable members: the sick, the elderly, the children." If we want our vulnerable people cared for by less skilled and apparently cheaper care givers, we can make that decision. However, we can only live up to our responsibilities as a social democracy if we provide adequate care by the most appropriate, skilled care givers in each circumstance.

We commend the government for extending the right to pay equity to a larger group of women and recognize that this commitment exceeds that of previous governments. We view this hearing process as a positive attempt to re-establish consultation. We hope that our comments are seen in that light.

N-CoPE is committed to the achievement of pay equity for all women and makes these recommendations to facilitate this goal. Ontario's Pay Equity Act of 1987 was an important step forward, but it did not go far enough. The proposed amendments to the act are important for our members who work in all-female or nearly all-female workplaces. As nurses, we value the work we do because it is meaningful, but meaning does not pay for our rent, our food, our child care expenses.

Nurses in VON, St Elizabeth, in public health, hospitals and nursing homes have all been waiting too long for pay equity legislation to provide their right to a just wage.

Nurses, as women workers, are tired of waiting. We are aware of the recessionary times, but we are also aware that the priorities in health care spending must be re-examined. Does a recession negate our rights as women? I don't think so. We challenge the government to live up to its commitment to human rights by moving forward and implementing pay equity for all women in the province.

**Mr Lessard:** Thank you very much for your submission. I'm interested in the comments that were made with respect to Bill 169 and the definition of the crown as the employer. We had a submission similar to that by the Canadian Union of Public Employees earlier today. They gave us some idea of the numbers of people who, if they were given the opportunity to continue to make applications to determine that the crown was the employer, may fall under that. Do you have any idea of the numbers we might be looking at if that option continued to be available?

**Ms Schreiber:** No, I'm afraid we don't.

**Ms Giallonardo:** It would be very hard to get those sorts of figures.

**Mr Lessard:** You can understand that that's one of our concerns as well. We wouldn't have any idea what the outcome might be.

**Ms Giallonardo:** I'd say about 10% of our members fit into that category: nurses working in small workplaces.

**Mr Lessard:** One of the things I suggested to CUPE is that one of the reasons that was an option pursued in the Haldimand-Norfolk decision was because the previous legislation denied pay equity to a large group of women. You've mentioned that in your submission: You commend the government for extending the right of pay equity to a larger group of women. I'm going to suggest that one of the reasons that was an option that was pursued was because previously women didn't have the other options available to them, the



proxy method and the proportional value method, and that's the extension of pay equity rights you're referring to.

Following an option similar to the Haldimand-Norfolk case would involve time, expense and possibly some frustration to go through that procedure and at the end find out that you didn't meet the test. I wonder if you agree with me that by providing these options, the proxy method and the proportional value method, trying to meet the Haldimand-Norfolk test may not be necessary.

**Ms Schreiber:** While it may not be necessary, I would hate to remove it. I feel Bill 169 is taking away what the proxy and proportional value may give. I think this is rights-based legislation, and when you put in all sorts of curves that define the ways in which people can obtain those rights, you're limiting it. I think Haldimand-Norfolk should stand and I think the proxy and proportional value add to it. I'm not in favour of further defining or limiting the definition of "crown employer."

1550

**The Chair:** Any further questions or comments from the government side?

**Mrs Caplan:** Thank you for your presentation. We've had presentations before this committee by both the Registered Nurses' Association of Ontario and the Ontario Nurses' Association. Are you familiar with their presentations to the committee?

**Ms Giallardo:** The Registered Nurses' Association, yes. We weren't there for ONA.

**Mrs Caplan:** We'd be happy to give you a copy of ONA's brief. On page 2 of the brief, if I could just share it with you, they say:

"By moving in the direction of Bill 102, this government"—referring to the NDP government—"has blatantly reneged on its promise to right historic wrongs in women's wages. These amendments"—as proposed in 102—"do not merely delay pay equity, they begin the dismantling of hard-fought gains."

That's a direct quote from ONA. They referred to the legislation as regressive. "Retrogressive steps" is the way they have seen the legislation, which I think is very strong language. This is not only because of the extension of the deadlines, but also the changes around maintenance, which interfere with the original principles of this bill. And we heard this morning from the Pay Equity Commission that if this legislation as it stands is passed, it predicts the province may need to see another whole piece of pay equity legislation at some point in the future, because of the erosion that will take place.

Further, ONA makes the point that for proxy, "We reject the government's amendments regarding proxy comparison methods."

I will ask you to take a look at their brief, and then if you want to say anything further to the committee or write to us, I'd be interested in hearing what you have to say. What they say in the bottom line is that this legislation should not be supported as it stands, because on balance, when you look at everything the legislation does, the perceived gains, the message of the improvements, it's actually a step backwards.

**Ms Schreiber:** I don't think our members would go quite that far. Our members appreciate the fact that this is

rights-based legislation, because there was talk at some point that it wouldn't be.

You've raised a number of points. Let's take them one at a time.

You mentioned the issue of maintenance. I can't recall if we included it or not. We are not in favour of cabinet having the authority to write regulations regarding maintenance. With all due respect to this cabinet and every other cabinet I've ever seen, I'm not impressed that it would not be used as a mechanism for dismantling pay equity which may somewhere have been achieved. Whether or not this particular government would do it, I'm not convinced that other governments would demonstrate the support for pay equity that this government has demonstrated. So I'm not entirely prepared to trash the government yet.

Our members are very concerned that this is not a Bill 168. We felt Bill 168 enshrined rights in a much clearer, much more obtainable way, particularly the proxy comparator, which in Bill 168 was female-to-male as opposed to female-to-female. We are concerned that the female-to-female is not quite in line with the idea of establishing comparable worth. If you're establishing comparable worth between female jobs and male jobs, then you have to compare female jobs to male jobs in some way. To do it one step removed by piggybacking, I think there's all too much risk of losing it there.

The other thing our members pointed out was that we are assuming the legislation is up for review in 1995, so presumably, this is just a step. We would hope, as part of the review, that an evaluation of the effectiveness of the existing legislation would be undertaken.

**Mrs Caplan:** Let me just interject. I would ask you, since the deadline's been extended to 1998, how effective would a review be in 1995 of legislation passed in 1993 that isn't going to take effect and reach maturity until 1998? Don't you think the review that will begin in 1995 will be jeopardized by the expansion of those deadlines?

**Ms Schreiber:** Would the review be jeopardized or would be outcome be jeopardized?

**Mrs Caplan:** Obviously the outcome.

**Ms Schreiber:** If the outcome if jeopardized, then that has to fall on its face as its own reward. I think plenty has already happened that could be reviewed and evaluated for its effectiveness. Very few of our members have seen anything that they would consider pay equity. Many of our members are spending a lot of money at the tribunal fighting for their rights. We appreciate the opportunity to do that, but it is still a drain.

**Mrs Caplan:** I want to spend a couple of minutes on Bill 169. I've made the point in the committee before that I believe Bill 169 has very little to do with pay equity and a whole lot of do with how the province collectively bargains with its own employees and those who would like to be provincial civil servants. The suggestion was made this morning that the issues of Bill 169, of who is a crown employee, in fact would better be dealt with in the reform of the Crown Employees Collective Bargaining Act, which is under review right now; and that if the government were looking at a definition of "employer" for the purposes of pay equity, that could be accommodated within Bill 102, although presenters



have said, "Leave the definition as it is." The suggestion is Bill 169 is not needed and that it's quite deceptive. Do you have any comments on Bill 169 outside that perspective?

**Ms Schreiber:** I think we would tend to agree with you on that. I have nothing to add there.

**Mrs Caplan:** So your recommendation would be that Bill 169 could be withdrawn?

**Ms Schreiber:** That was the strong recommendation from our members. They made that very clear to us.

**Mrs Caplan:** Could you tell me a little bit about your membership? How many members do you have, and how long has your organization been in existence?

**Ms Schreiber:** We have formally existed since the summer of 1990, although a number of us were meeting before that. So it's in direct response to the implementation date, the posting of the first plans. Our members tend to be one or two representatives of a variety of workplaces. We currently have about 105 people, and when we polled them and totalled up the numbers they represented, it was something like 10,000. It's a very loose network, and because it's a voluntary organization, we might have consecutive monthly meetings and see completely different groups of people showing up.

**Mrs Caplan:** The only reason I asked the question is that I hadn't met with your group or heard about you before, and I was just interested in when you formed and where your membership came from.

**Ms Schreiber:** It's not that we didn't try when you were minister.

**Mrs Caplan:** In 1990?

**Ms Schreiber:** In the spring of 1990 we tried. That was before we had a name, though.

**Mrs Caplan:** I don't have any recollection of ever hearing from you.

**Ms Schreiber:** We have met with the Minister of Labour or the deputy.

**Mr Arnott:** I was interested in the size of your membership as well, but that question has been answered. I want to ask you a general question about philosophy, I guess. As taxpayers—and I know nurses pay a lot of their salary in tax—are you comfortable generally with government entering into programs the cost of which is totally undefined and totally unquantifiable?

**Ms Schreiber:** Yes, I'm comfortable with it, because I feel if government doesn't enter into the affirmative action type of programs, affirmative action will not happen. We've had 5,000 years of the Judaeo-Christian heritage to demonstrate that.

**Mr Arnott:** I'm not comfortable with it at all. I'm concerned about it, and I'd like to know what programs are going to cost before I would support them in terms of my role as a member. I think I have an obligation to the taxpayer, whose tax load is continuing to increase. There are many taxpayers who feel they're paying enough in tax and aren't interested in paying any more.

**Ms Schreiber:** Are you asking me, can we afford pay equity?

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**Mr Arnott:** No, I'm not. Generally, in terms of government, do you think it's my responsibility as a member to know, with some measure of assurance, what a program is going to cost? We go back to the presentation. You maybe weren't here for this. Earlier this afternoon, the Ontario Association of Interval and Transition Houses said—I can repeat it a couple times because I know you don't have it in front of you—"In conclusion and to state our case most plainly, we wonder if the cost of achieving pay equity will prove to be greater than the results."

I think, as legislators, we all have an obligation to measure the cost of a program, the cost of an initiative, against the benefits that we hope it will achieve. If we don't have the slightest idea what it's going to cost, I think we have to be very cautious.

**Ms Giallonardo:** I guess I would wonder how that would help you in making a decision about pay equity.

**Mr Arnott:** Measuring costs and benefits.

**Ms Giallonardo:** Back to what Rita was saying, it's clear-cut that a change is needed. How is that going to be helpful to you in deciding to place that legislation? We've already said that we think putting that money into nurses' hands is putting money back into the economy.

**Mr Arnott:** Yes, I've heard that argument before and to me it's not as strong as other arguments I've heard.

**Ms Giallonardo:** We have the statistics to show that women are underpaid. How are you going to decide what level of cost you would tolerate to make that sort of decision?

**Mr Arnott:** Yes, but you said argument. In my case, as a representative of an agricultural riding—I'm privileged to be the representative here of the people of Wellington—I could make the argument to the government that it has cut assistance programs to farmers, say, and say that every dollar it gives farmers—so once you increase it 100%, all that money goes back into the economy. I have made that argument and it isn't necessarily accepted and acted upon.

**Ms Schreiber:** The problem is that women are, as a group, poorly paid. We all accept that. Women have responsibilities for child-rearing, child-bearing and holding down jobs. To put money in women's pockets is one of the ways of keeping people out of poverty, and poverty, we know, is the biggest killer.

I was reading this morning that in places where there are massive layoffs and things like that, where there is economic depression, health care costs go up because people have more heart attacks, people have more pneumonia, people have more simple health issues. So it's penny wise and pound foolish to say we can't afford pay equity, because we pay for it now or we pay for it down the road.

**Mr Arnott:** If we're all richer, we're all better off, I agree. Thank you.

**The Chair:** Thank you, Mr Arnott. Mr Tilson.

**Mr Tilson:** I'd like to ask a question which I believe is a question of pay equity. It's a concern that I have with the distinction between nurses in private long-term-care facilities and public long-term-care facilities. I'm not an authority on the subject, but you probably are. Maybe you are, maybe

you're not; who knows who's an authority on anything, I suppose.

I am told, and I am told by nurses who are in both of those facilities, that nurses are better paid generally in the public institutions as opposed to the private institutions. The reason that they are better paid is because the funding is far superior to the public facilities. Therefore, there is a tremendous discrimination between women, between nurses, who are trying to improve our long-term care. Do you have any thoughts on that subject?

**Ms Schreiber:** Not really. I'm not sure what you're getting at other than—

**Mr Tilson:** I guess I'm looking at the whole subject of inequities as far as the payment of salaries and wages to women. One can compare women to men. One can compare women in the public sector to women in the private sector. One can compare women who are working for the public service as opposed to crown agencies. One can compare women who are employed by businesses of under 10 as opposed to the other categories.

There are inequities. There are differences between women who are performing the same work, whether comparing to women or whether comparing to men. Should there be some sort of amendment in this legislation that would oblige the government to assist particularly long-term care facilities of a private nature; in other words, that the same funding that's given to public should be given to private?

**Ms Schreiber:** I could only provide my personal opinion on that, not the group's opinion. It seems to me that there are inequities between workplaces everywhere. Before the Ontario Nurses' Association existed, nurses in other parts of the province earned different amounts than nurses in Toronto. That's one of the reasons there's a union. As a nurse—

**Mr Tilson:** I appreciate I've caught you off guard.

**Ms Schreiber:** Yes.

**Mr Tilson:** We're talking inequities between what men are paid and what women are paid. It's just that this is the first opportunity I've had, quite frankly, to ask nurses questions on that subject. It does deal with the subject of inequality between nurses and it's a concern that I have in the long-term-care field.

**Ms Schreiber:** It probably speaks more to the inequality between patient care as well. I couldn't say—

**Mr Tilson:** Of course. Absolutely. I'm sorry, it's unfair of me to throw that at you. It's just that I thought perhaps if you were dealing with inequities as far as the salaries of nurses are concerned, this would be a subject you might have some thoughts on.

**Ms Schreiber:** We'd be happy to talk to our members and get back to you on that, though.

**Mr Tilson:** Thank you. I would like to hear from you more on that.

The comment you made is that money is not the issue. I'm going to pursue Mr Arnott's line of questioning. The public on the one hand, men and women, say they're not making enough money. Women say they're making less than men. Some occupations are being paid less than others. People say, "We're not getting enough to live on." There are

all kinds of inequities that exist in this country, in this province, in this city. You're right. This inequity has existed for some time. Will the next government say: "These guys left a mess. We're going to have to delay it another three years"? You can almost hear someone saying that.

We are in a recession. It's going to cost \$1.2 billion next year—I'm trying to recall figures; it's going to cost \$600 million starting in April of this year—to implement this legislation. We're in a recession. The government's broke. Hospitals are not getting their transfer payments. We're worried about health care. We're worried about education.

The government is not providing moneys to hospitals, to health care givers, to universities, that are required to implement this legislation. They've made that clear, and you can criticize them. I spend every day down here criticizing them because of my concern for health care, education and the transfer payments to municipalities. That's one of my roles as an opposition critic. I get concerned about that. The fact is they're not giving any more money.

I guess I look at the subject of budgets and moneys that are available to provide health care in hospitals. Unless they change their minds—and they're not going to change their minds. You know, one, two and two has become one, two and minus two as far as transfer payments are concerned. The games that are being played by these people are unbelievable. I don't know how we're going to finance hospitals. I don't know how we're going to finance our schools and the quality of our education.

I am not downplaying your concern. That's a given. Anybody who says he doesn't believe in pay equity is dead wrong. We all believe in pay equity. The question is, in response to your statement that money is not the issue, where's the money going to come from? Well, it can come from only one source and that's the government. They're not going to give it. If that's a given, the next question I have for you is, what would you cut from the health care budgets to allow pay equity for the nursing professions to proceed?

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**Ms Giallonardo:** I think that comes back to the way you're distributing the money that's being allocated right now. As Rita said, there are studies to prove that nurses are perhaps more effective in providing care than other professionals, and we need to evaluate how we're spending the money that we're spending now. We're not convinced there needs to be new money. We have seen new money provided. I'm not sure how much of an increase the doctors got this year, but I understand that it was new money. I don't know where it was spent.

**Mr Tilson:** I don't know a lot of things that go on in this place.

**Ms Giallonardo:** People say there's no new money, but money comes up for certain groups of individuals. We're saying that we have to evaluate the way we use the money. There are studies that Rita cited.

**Mr Tilson:** Have you got recommendations to this government as to where it's going to find the money?

**Ms Giallonardo:** People should be accountable within the hospital system for the way they spend money.



**Mr Tilson:** Have you got specific recommendations to this government or the hospitals as to where they're going to find money to implement the pay equity programs?

**Ms Giallonardo:** First of all, I'm not convinced that it's cost the government a lot of money, but I strongly urge it to look at the way it's spending its current money.

**Mr Tilson:** I understand that. I do that regularly. I'm with you. My question is, and I'm very serious about this, what will be cut? What should be cut?

**Ms Schreiber:** I really hate to hear the word "cut." I think what we have to start looking at is the cost-effectiveness of the health care we are providing. The other day, the RNAO mentioned the amount of money we spend on the last six months of a person's life. I think we have to look at that. God knows, I'm not saying euthanasia—

**Mr Tilson:** I hope not.

**Ms Schreiber:** —but I am saying that there are times when someone is diagnosed with something that is terminal, for which there are no effective cures, there are no effective controls and treatment is ineffective.

Why do we spend \$200,000 on the last six months of that person's life—and, as a nurse, I would say ruining the quality of that person's life—when we could spend maybe \$10,000 or \$20,000 making the last six months of that person's life meaningful because it would be pain-free and comfortable and they would be able to tie up loose ends with family and loved ones? That's a more humane approach.

But when the primary health care provider refuses to understand that perhaps or refuses to recognize it or sells the product, for whatever reason—and I'm speaking from personal experience here—then we get sucked into it. It's a buyer-beware situation with health care, and the public is not knowledgeable enough to know that when someone tells them, "Oh, yeah, we can do a lot," they should ask: "What does that mean? What does 'doing a lot' mean? What will my life be like?" I think that's one point. I think we have to look at cost-effectiveness.

The other point is that you're talking about transfer payments that this government is not passing on to the MUSH sector. This government is not passing on what it is not getting from the federal government. The transfer payments from the federal Conservative government are drying up.

**Mr Tilson:** That's the problem. Nobody has any money. Where's it going to come from? Let's be realistic.

**Ms Schreiber:** I'm not convinced that the federal government—

**Mr Tilson:** Are you saying someone's hiding it somewhere? They're hiding more money over there? Come on.

**Ms Schreiber:** With the GST? I don't know.

**Mr Tilson:** Listen, if I could just stop you for a minute, I appreciate some of the things you're saying, but we're on the verge of getting into politics and I don't want to do that.

**Ms Schreiber:** We shouldn't, no; this is not a political arena.

**Mr Tilson:** I guess what I'm looking at is that I'm a legislator and I'm asked to be an expert on everything, including health care; you are in health care. You have specific thoughts, and you come into this committee and say: "Pay

equity must be implemented now. Women have suffered long enough." I understand all that. Whether you're talking business or whether you're talking government, I do. The facts are there. You don't have to persuade anybody about that.

It still gets back to the question, I say to you that money is the issue. It's got to come from somewhere. It doesn't come out of the trees. I used that expression two or three times today. I need, as a legislator, as a person who's trying to provide, hopefully, constructive criticism to this government, need thoughts from you as to some of the things you are getting into. If you're saying this government is providing incorrect health policies, that there's waste and that there are other areas that could be made free by changing some of those policies, you're in the field and it would be very helpful for you to tell this committee your thoughts on how that money could be freed up.

**Ms Schreiber:** In order to free up money so that nurses get an appropriate wage, I think we have to look at the biomedical dominance of our health care system.

Right now we have a situation—and I'm not saying this to doctor-bash—which is controlled in a pyramid style with doctors on the top, and the doctors are the point of entry for health care. Even though I might only need to have some physiotherapy, even though I need some exercise or some nutrition regime or something, why do I have to see a physician to get moved over to go see those things?

I would be the last person on earth to tell you that the American health care system is good. However, in the United States nurse practitioners and nurse specialists, in their area, people with advanced preparation in a particular clinical area, are used as primary care providers.

I'm a psychiatric nurse. If I were to move across to New York state, I could carry a psychiatric clientele of any kind I wished: chronic, walking wounded or whatever. I could prescribe within my field psychotropic medications. I would be licensed. I could have third-party payments. That's somewhat more cost-effective even if you pay me \$100,000 a year to do it. If anybody has tried to find a psychiatrist in this province, you know the waiting lists are long. To try and find a psychiatrist who is sensitive to the issues of women, lesbians, black people, immigrants or anything like that, you could wait a really long time.

We have a lot of nurses in this province, and we have a lot of capable nurses, a lot of nurses with advanced preparation who can be primary care providers in their areas of specialty.

**Mr Tilson:** I'm asking you a tremendous job, but I would ask if your group could provide some summaries of areas in which this ministry is undergoing matters of waste and in which policies could be changed which could providing funding to enforce the badly needed pay equity of the nurses in this province.

**Ms Schreiber:** We'd be happy to do what we can. I would have to point out that the policies of the Ministry of Health in terms of who practises what, in terms of the health disciplines legislation, were not invented by this particular government. It's been long-standing.

**Mr Tilson:** Listen, I'm just saying as a legislator who needs assistance to criticize these people—

**Ms Schreiber:** Absolutely.

**Mr Tilson:** —I need all the help I can get.

**Ms Murdock:** You don't need any assistance.

**The Chair:** Thank you very much, Mr Tilson. Ms Schreiber and Ms Giallonardo, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and giving us your presentation.

**Ms Schreiber:** Thank you very much.

**The Chair:** As we're a little ahead of schedule and our next presenters aren't here, we'll call a 10-minute recess.

The committee recessed at 1618 and resumed at 1634.

PAT SCHULZ CHILDCARE CENTRE  
METRO TORONTO COALITION  
FOR BETTER CHILD CARE

**The Chair:** I call this committee back to order. As our next presenter, I call forward Pat Schulz Childcare Centre, and I understand you'll be sharing your time with the Metro Toronto Coalition for Better Child Care.

**Ms Cheryl West:** Yes.

**The Chair:** Good afternoon.

**Ms West:** Good afternoon.

**The Chair:** Just a reminder that you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you could keep your remarks a little briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

**Ms West:** My name is Cheryl West and I'm speaking for the Pat Schulz Childcare Centre, and I'm sharing my time slot with Zeenat Janmohamed from the Metro Toronto Coalition for Better Child Care.

I supervise a non-profit infant-toddler centre in Toronto and I wanted to speak to you today about the quality-of-life conditions that early childhood educators live with.

First, I want to say that early childhood educators have been so hopeful about pay equity legislation as we believe that finally one of the most serious examples of systemic gender bias will be addressed. We know that only with the support of legislation will society address the value our work provides in our communities.

We are mostly women who are trained, dedicated and committed to meeting the demands of educating children from birth to 12 years of age. We work in partnership with parents, teachers and community members to ensure the healthy care and development of our children.

I work in a centre where the board of directors has tried desperately to compensate staff with fair wages under current funding limitations. The intent of this board of directors has been to pay wages as close to parity with our municipal colleagues as possible. However, this is not always possible. It seems to change year to year. However, I am still among the luckier women who work in the field. Being lucky in the field, however, pales when we look at the bigger picture.

I have 20 years' experience working with children in a variety of settings. In 1980, I began working as a home care provider on the strength of my public school teaching experience and qualifications. In 1986, I decided to work in centre-based care at the salary of \$16,500 per year. Although

returning to teaching has been an option for me from time to time, I prefer working with younger children, especially infants and toddlers. With that consideration, I decided to return to school for an ECE.

Although I recognized the personal and financial limitations in this decision, I never accepted them as just. Many of my colleagues are single and/or sole support mothers, as I am. We support families on frozen or shrinking wages. Other women I know in our field have decided to hold off on having children or not to bother having them at all because of low wages. Today, I have co-workers, each with 11 and 13 years' experience, whose wages have prevented them from having children or from being able to afford quality care for the children they do have.

A very large proportion of the young adult women I have worked with over the years continue to live with their parents because low wages make it impossible to live as independent adults. Many of us take second jobs to make ends meet. We live paycheque to paycheque with only the remote dream of a pension in our future. The quality of life as an ECE is seriously limited and many good teachers with years of valuable experience leave the field because we cannot afford to live, raise our own children, pay taxes or sustain reasonable lifestyles on the wages we earn. We must earn the lowest of any trained professional. We deserve a better deal.

Women working in child care centres have been holding out hope for this legislation for years, years where we continued to subsidize the child care sector with our low wages while providing necessary care for children whose parents drive the economic machine of this province. We have watched and waited long enough.

I can say that although Bill 102 provides us with hope, my co-workers and I are disappointed that the implementation date for proxy comparisons has been delayed a year. In addition, we must be able to use our municipal co-workers for comparison. This is fair and just. We urge implementation of a cap for proxy payouts of January 1, 1998. Otherwise, at 1% of payroll per year, I and others like me will have retired before we achieve our pay equity settlements.

**The Chair:** Anything further?

**Ms Janmohamed:** I'm sure you must be tired after a long day, so I'll be as brief as I can.

The Metro Toronto Coalition for Better Child Care was founded in 1983 by a broad-based membership, including parents, child care staff, trade unions and community-based social service agencies. As active members of the Ontario coalition, we would like to take this opportunity to endorse the recommendations made in its presentation to you.

We work to build a strong network of child care supporters across Metro and lobby for change in child care policy at all levels of government. We work closely with the regional and local governments to ensure that the child care system in Metro Toronto operates fairly and is accessible to all families.

Some of you are aware that Metro Toronto has the largest proportion of subsidized child care in the province of Ontario. There are approximately 20,000 subsidized spaces in Metro Toronto. Another 6,000 are full-fee spaces. We currently have 3,800 licensed vacancies at a time when there are 11,200 children on the waiting list for subsidized child care.



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In the last three years we have experienced the most difficult times in the history of child care. We have seen centres close and a reduction in subsidized spaces as a result of underfunding. Parents can no longer afford to pay exorbitant full fees which have resulted in vacancies and a tremendous increase in the waiting list for subsidized child care. Regardless of the difficult situations faced by child care programs in Metro Toronto, we continue to survive because we are committed to providing quality care for young children.

The Metro coalition represents child care staff who earn some of the highest wages in the non-profit sector. Our members earn an average of \$25,000 per year. We recognize that our wages are better than most child care staff in Ontario, who earn an average of \$22,000 a year. However, we also recognize that we cannot survive on these wages. As a predominantly female sector, we earn 70% of the wages that men earn.

We want to applaud the provincial government for making amendments to the Pay Equity Act which will extend pay equity to most workers in predominantly female workplaces like child care programs. The amendments will begin to address the wage inequities women face in the work force. Staff working in programs operated by the municipality earn an average of \$3,500 more than staff working in the non-profit sector. With the addition of their pay equity settlement, municipal staff will earn an average of \$5,000 more. Wages and working conditions of staff working in the municipal sector have served as a benchmark for wages in non-profit community programs. The work performed in both settings is identical. Child care staff in both programs strive to provide a holistic and balanced social and educational program for young children. The only difference between the two groups is that municipal staff have better wages and benefits. Consequently, staff in municipally operated programs remain in the child care field for longer periods of time and are able to provide consistent care for children. In the non-profit sector we face a higher turnover as experienced child care staff move to other careers which pay a living wage.

We believe strongly that the implementation of pay equity for child care staff in the non-profit sector will improve the quality of care that children receive, because better wages for staff is a major indicator of quality in child care. Staff who earn a decent wage are more likely to remain in the field of child care.

We urge you to ensure that the pay equity-adjusted wage rate of the municipal child care worker serves as the comparator for wages in the non-profit sector. In areas where a municipality does not operate child care programs, the seeking organization would go to the next nearest municipality that offers one to establish its comparator. We urge the government to begin payments as originally promised to January 1, 1993. Child care staff are not prepared to wait any longer for the government to meet its commitment. We urge the government to establish 1998 as a time by which pay equity must be achieved in the proxy sector.

In Metro Toronto, staff in community-based programs will have to wait approximately 30 years to achieve pay equity without a capping on the payoff period. This is an issue of fairness which must be addressed in the current amendments.

To leave it open would be an insult to women workers. We urge the government to maintain the date for pay equity achievements in the public sector to 1995. In Metro Toronto, municipal child care staff reached a pay equity settlement of \$1.17 per hour. These women should not have to wait another three years for pay equity.

In closing, the Metro coalition would like to reiterate comments made by several child care programs and the Ontario Coalition for Better Child Care. We are not prepared to accept additional wage subsidies as an alternative to pay equity. We see pay equity as an important justice issue for women. If the government can find adequate funds for the doctors and judges of Ontario it can certainly find the funds necessary to redress wage inequities faced by women workers. Thank you.

**The Chair:** Thank you. Each caucus has about six minutes for questions and comments.

**Ms Poole:** Thank you very much for coming to the committee. It's good to see you again. The Coalition for Better Child Care presented on Tuesday, I think, and made many of the same points you have so eloquently expressed today. I think one of the major disappointments for the coalition was the delay: first of all, the delay from the timetable set in the 1987 legislation that the public sector would achieve pay equity by 1995, that delay for three years; and the second, which you've both addressed in your presentation today and which specifically impacts on your area, and that is the delay of implementing proxy.

When we were talking to Kerry McCuaig from the coalition she was very concerned that payouts from proxy wouldn't actually end up being in your pockets till 1995. That was her estimation. She said the child care sector won't see any payouts from this proxy pay equity till 1995, and I said that's really interesting; that's an election year. It means that the current government gets to take all the accolade for giving money to the child care workers in an election year and yet the cost of it would be borne by a subsequent government. I said, "Is that your reading?" She said, "Yes, and it makes me very, very cynical."

Are you cynical? Do you still have the optimism that this government is not only going to proceed with its promises, but do what it originally told you to do?

Secondly, are you aware that the coalition is estimating that the average payout to a child care worker on an annual basis will be in the vicinity of \$350, and that's it?

**Ms West:** I'll take the first part of your question. I would probably not use the word "cynical." I would say, as I stated in my deputation, that we would be very disappointed. I think I'm here today to say what I said, and that is that if there is some possible way now to redress this delay, I want people to hear that and do something about it.

Secondly, yes, we are aware that the payouts are \$300. This is at the 1% payout that they are \$300.

**Ms Poole:** It would take a long time.

**Ms West:** Yes.

**Ms Poole:** I think I estimated three decades, but one of the child care groups said probably more like six decades. So you'd be retired first.

**Ms West:** Absolutely. That was my final point, that I certainly would be retired before I would see my settlement.

**Mr Arnott:** Thank you very much for coming in. I don't have any questions, but I hear your sincerity and the pride and devotion you put forward to your profession. I want to thank you for that, and thanks once again for coming in.

**Ms Murdock:** I apologize for not being here for your oral presentation, but I did read it. I was obviously here for the coalition's presentation the other day, and I see that you endorse it.

I notice in the last paragraph that additional wage subsidies are not satisfactory. Given that in 1987, when pay equity came in on job-to-job, and proportional value of course is now going to at least be in law, hopefully, once this gets passed, and then proxy initiated—and we realize it's in some instances going to take a long time. Just given the complexities of proxy itself, it's going to take a long time for some groups to even find a proxy comparator. But there has been money set aside. Last year, \$75 million was used. We've allocated \$240 million for pay equity in pending legislation that would eventually get the employers in the job market to finally get pay equity within their own workplace.

I realize that it isn't an ideal world. It would be nice if we could do everything all at once. I'd be really happy as a female and as a legislator. But in the meantime, those adjustments that have been made, particularly in the day care sector—in fact, it was because of the day care sector that this whole issue was raised. It isn't the best of all worlds, but it is satisfactory for the moment. Would that be fair?

**Ms Janmohamed:** No, it's not satisfactory for the moment. We appreciated receiving the direct operating grant. We appreciated receiving the wage enhancement grant. But pay equity is a justice issue and we've talked about this time and time again.

**Ms Murdock:** It's a right. Absolutely.

**Ms Janmohamed:** It's a right, and we are not prepared to settle for additional wage subsidies in its place. Quite frankly, I would turn around and ask you the question, are you prepared to take that long to pay it out to women who are the most undervalued and underpaid in the industrial sector?

**Ms Murdock:** That's why this bill is going through, or at least has been introduced. I can't be presumptuous enough to think that every single thing will go as planned.

I've stated here a number of times that we've been fighting for women's issues for hundreds and hundreds of years and pay equity is a really important one. The realities of this government, and I don't care whether it's an NDP or a Conservative or a Liberal government of any of the provinces, are that the money is just not there. You can put something in law, but if there's no money to pay for it, then what is the point of having it in law?

Interjection.

**Ms Murdock:** You had your opportunity to speak.

**Ms Janmohamed:** We know the government is in deficit, we know the government has been called bankrupt, but you've obviously found funds to settle with the doctors and to provide an increase of wages to the judges. We have suggested to you that it's perhaps time to look at a fairer taxation system.

Quite frankly, one of the things you might want to look at is paying full taxes on the wages you earn as an MPP. We know one third of it is tax-free. There are a lot of areas that could be looked at and think about priorities in terms of spending.

We're not prepared to take a back seat on this again. Like you said, we've waited hundreds of years. We've had this discussion before, and I don't think we're prepared to wait any longer. We have started to organize a lobby of MPPs, both in government and in opposition, and we'll be coming forward to meet with you to discuss not only pay equity but child care reform as well. We're not prepared to settle for this.

**Ms Murdock:** I have ongoing discussions within my own riding with groups on some of these very issues, so I'm well aware. I just wanted to ask you, because the Ontario Coalition for Better Child Care has gone into the specific kinds of language that are used in the act, if you had—let me put it another way. Out of all the things the coalition has suggested, if you had three major ones that absolutely had to be in there—one of course I presume would be the three-year question—what would be your other two?

**Ms Janmohamed:** Why three? They were simply suggesting—

**Ms Murdock:** I mean—

**Ms Janmohamed:** There are four recommendations in front of you. I think it's unfair to ask us to choose between the four, "Pick three out of four and maybe we can work something out." I think all four are reasonable.

**Ms Murdock:** I didn't say that. Which ones do you consider to be of the highest priority, is what I'm asking.

**Ms Janmohamed:** From the coalition's perspective, I would think that all four are equally important.

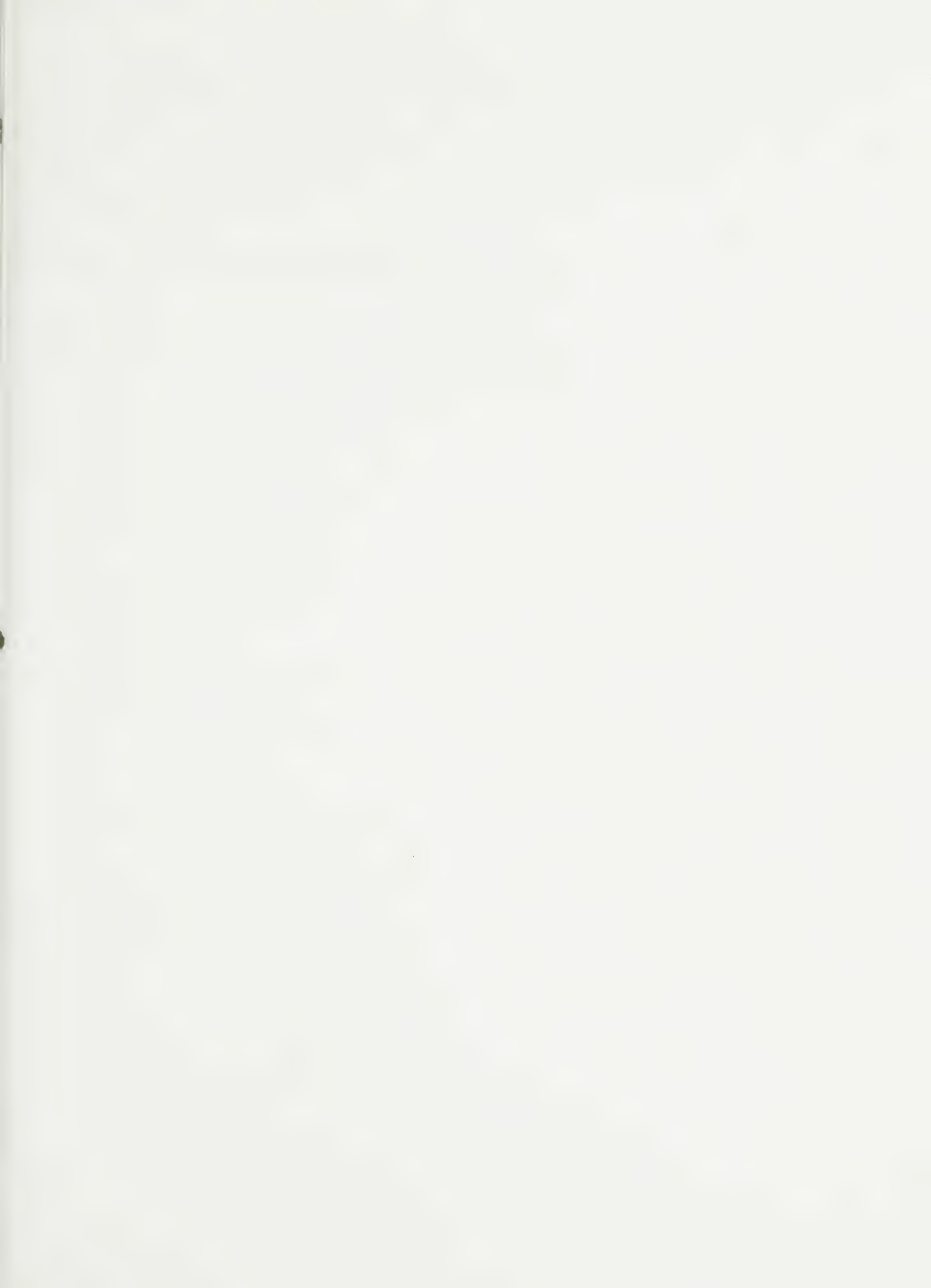
**Ms Murdock:** Are equal in priority?

**Ms Janmohamed:** Yes.

**The Chair:** No further questions? Ms West, Ms Janmohamed, on behalf of this committee I'd like to thank you for taking the time out this afternoon and giving us your presentation. Seeing no further business before this committee, this committee stands adjourned until 9:30 tomorrow morning.

The committee adjourned at 1654.









**Substitutions present / Membres remplaçants présents:**

Arnott, Ted (Wellington PC) for Mr Runciman

Caplan, Elinor (Oriole L) for Mr Chiarelli

Lessard, Wayne (Windsor-Walkerville ND) for Mr Morrow

Mathysen, Irene (Middlesex ND) for Ms Carter

Murdock, Sharon (Sudbury ND) for Mr Wessenger

Poole, Dianne (Eglinton L) for Mr Mahoney

Tilson, David (Dufferin-Peel PC) for Mr Harnick

**Also taking part / Autres participants et participantes:**

Evans, Catherine, policy adviser, rights and legislation, Ministry of Labour

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)
- Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- Carter, Jenny (Peterborough ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
- Harnick, Charles (Willowdale PC)
- Mahoney, Steven W. (Mississauga West/-Ouest L)
- \*Malkowski, Gary (York East/-Est ND)
- Runciman, Robert W. (Leeds-Grenville PC)
- Wessenger, Paul (Simcoe Centre ND)
- \*Winninger, David (London South/-Sud ND)

\*In attendance / présents

(Continued overleaf)





## Legislative Assembly of Ontario

Second Intersession, 35th Parliament

# Official Report of Debates (Hansard)

Thursday 21 January 1993

## Standing committee on administration of justice

Pay Equity Amendment Act, 1993,  
and Public Service Statute Law  
Amendment Act, 1993

Chair: Mike Cooper  
Clerk: Lisa Freedman

## Assemblée législative de l'Ontario

Deuxième intersession, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Jeudi 21 janvier 1993

## Comité permanent de l'administration de la justice

Loi de 1993 modifiant la Loi sur  
l'équité salariale, et Loi de 1993  
modifiant des lois en ce qui  
concerne la fonction publique

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 21 January 1993

The committee met at 0945 in room 228.

PAY EQUITY AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT LA LOI  
SUR L'ÉQUITÉ SALARIALE

PUBLIC SERVICE STATUTE LAW  
AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
LA FONCTION PUBLIQUE

Consideration of Bill 102, An Act to amend the Pay Equity Act / Loi modifiant la Loi sur l'équité salariale, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act / Loi modifiant la Loi sur la fonction publique et la Loi sur la négociation collective des employés de la Couronne.

**The Chair (Mr Mike Cooper):** I call this meeting of the standing committee on administration of justice to order. We'll be continuing with the public hearings on Bill 102, An Act to amend the Pay Equity Act, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act.

CANADIAN UNION OF  
PUBLIC EMPLOYEES, LOCAL 2204

**The Chair:** I would like to call forward our first presenters for the morning, from the Canadian Union of Public Employees, Local 2204. Good morning. Just to remind you, you'll be allowed up to half an hour for your presentation. The committee would appreciate it if you'd keep your comments a little briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Ms Nancy Campbell:** Good morning. I'm Nancy Campbell. I'm vice-president of CUPE Local 2204 and a full-time cook in a child care centre in Ottawa.

**Ms Jamie Cass:** I'm Jamie Cass and I'm an education officer with CUPE 2204 and I've worked in the field for about 18 years, both as an early childhood educator and a coordinator at a day care centre.

**The Chair:** Thank you. Please proceed.

**Ms Campbell:** We're a local union of the Canadian Union of Public Employees, CUPE 2204, based in eastern Ontario. All our members work for community-based child care programs. Our local is comprised of over 200 staff employed in 12 different agencies: early childhood educators, cooks, cleaners, clerical and administrative staff, coordinators, home visitors, resource teachers and integration advisers as well as teachers and supervisors working in specialized settings. Unionization is still not prevalent for the majority of staff working in child care programs, with the exception of employees working in the municipal sector. We felt it was

important for you to hear from front-line workers and to know the impact this legislation will have on us.

Our local would like to focus on a few areas that will have serious effects on our membership. Particularly, however, we want you to know that we support the submissions of the Equal Pay Coalition and the CUPE Ontario recommendations as well as the Ontario Federation of Labour. We echo the need to cover workplaces with less than 10 employees by prohibiting discrimination in compensation systems on the basis of gender, support the changes recommended in the definitions section of the legislation and urge you to delete the sections of the bill that take away existing rights provided under the present legislation.

The Ontario Coalition for Better Child Care has also presented its brief, and we want to endorse its presentation and recommendations before this committee. Our local's an active member of the coalition. I think they summarize well the situation of the profession in the province as well as the pressing need for increases and salaries and benefits in the field, the impact of higher salaries and benefits on the quality of care and, finally, how clearly levels of compensation have been monitored and held back because of our reliance on parent fees.

We welcome the introduction of Bill 102, which will finally redress many of the outstanding issues that have been plaguing our profession for a long time. We feel that as a child care community, we've probably been waiting for this since the Liberal government first introduced legislation in 1986. We worked hard for that legislation and could not believe that we were not going to see any effects on our sector. Even though we have no comparator in our workplaces, no one could deny that we're in a low-wage female job ghetto that has been historically undervalued and underpaid.

Child care workers were further alarmed when the NDP government recently pulled its original amendments to the Pay Equity Act and delayed the first year of pay equity payments by yet another year, to 1994. We're here to tell you that we should not have to wait any longer and we urge you to change subsection 21.22(1) to January 1, 1993, to begin payments as originally promised.

**Ms Cass:** I want to talk for a few minutes about cross-establishment methods of comparisons. To tell you a little bit more about our local, we're made up of 12 different agencies and we bargain with nine of our employers together at a common table, and three employers have separate collective agreements. We want to use these hearings as an opportunity to give you a few examples of the concerns about the legislation from our point of view and the impact on the child care staff. We want legislation that makes sense to people, is easy to put in place and puts well-deserved money in women's pockets.

Our local believes that the most appropriate comparator is the municipality. In Ottawa-Carleton we've been working, I'd

say since we were organized in 1978, to engage in trying to achieve wage parity with our municipality. They're doing the same kinds of work and it is something that our members in fact understand, so we urge you to ensure that the municipality is identified as the comparison or proxy organization for the child care sector. In fact, when we first looked at it we would have preferred to have female jobs in the all-female workplace compared to male jobs in organizations, and we do urge the government to revisit that original model.

A major concern for our local, though, is the section that defines what happens if there is not a similar key job in the proxy organization with those in the all-female workplace. The legislation is recommending a group-of-jobs approach, which would allow the proxy employer to choose a group of jobs that the seeking organization can use in its pay equity plan. We feel that this leaves much too much discretion with the proxy employer. The proxy employer in fact will have almost sole control over the group of jobs that is given to the seeking organization.

We're also concerned that municipalities that have decided to put no funding or resources into child care, and in fact do not cost-share their 20%, will continue to undervalue the whole nature of the service, the skill, effort and responsibility of the job of the early childhood educator when providing us with the comparators. It's unfair that this proxy employer will ultimately control who the comparators are for the child care employees.

We recommend that you go back to what was in Bill 168, which stated that where there were no similar jobs in the proxy organization to those in the seeking organization, you would go to the nearest geographical location where there are similar jobs.

We took a very clear example in our case with a day care we represent, Wise Owl Day Care in Pembroke. It's an all-female workplace located in Pembroke. The municipality offers no child care support, no subsidies. They do not cost. It's an approved corporation with the province. The city of Pembroke has made it quite clear that it in fact does not support the whole issue of municipalities and child care. When the Wise Owl employees are looking for their comparators, the city of Pembroke is going to have almost all the control to decide who are our comparators and to give us only those jobs that it feels are appropriate.

We say that we should be able to go to the nearest municipality that has child care workers in it and be able to make those comparisons. In our case it would be with the regional municipality of Ottawa-Carleton. That inherently makes sense because the provincial area office is the same office. It has integrity and the child care workers would understand what they were being compared to.

We really urge you to delete the sections of the bill that give reference to the group-of-jobs approach and amend it to allow seeking organizations to go to the next-closest geographical region where there are similar jobs for comparison.

We also wanted to deal with the capping of the payouts. I gather you've heard from a number of child care groups. This one tends to be a major issue. I think it became more major for us when we went back to our collective agreements and started to take some very real examples.

We put down in our brief two examples from our local, and those are the wage rates, let's say, after a person's been there for two years of work. We used the payroll and benefits of the centre. We came out with their estimated 1% of payroll. Using the number of employees in the first example, it would leave \$248 per employee. Using this average, it would take the head teacher 33 years to achieve pay equity and the teachers 42 years. You can see how ludicrous it is for professionals working in the field to have to wait this long. If there is the political will, the Treasurer of Ontario can find these long-overdue pay equity payments. There must be a cap on the number of years it takes to achieve pay equity.

I'll point to our second example, again a real case, a community-based 74-children centre. In that case it would take the teachers 20 years and the head teachers 9 years. This is just the tip of it. I know you heard about a day care centre where it would take them 80 years. This we do not consider adequate legislation.

We also want you to note that in our two examples we didn't factor in benefit comparisons. Most of the non-profit child care centres do not have equivalent benefit packages with the municipality. In particular, we point to the pension plans, which are almost non-existent in the non-profit sector.

A limit on the number of years it will take to achieve pay equity is absolutely necessary if we're to see any real impact on wages in our profession. Child care staff enter the field because of their care and concern for the quality of care of our children. Most likely, they will leave the field because the value of the work they perform has not been recognized by society or compensated appropriately. Not only do staff live in poverty while they work, but they have a life of poverty assured to them upon their retirement.

We really strongly urge you to cap the pay equity amount so that workers have to achieve it by 1998 and we also strongly support the call to have all pay equity settlements in the public sector completed, as originally stated, in 1995.

One of the next issues I want to deal with is the whole issue of 1% funding to child care agencies, and this is particularly because of the way we're funded. If we see child care reform, I'm hoping that we'll in fact see some of these problems alleviated.

We have a number of child care centres that are close to parity with the municipality. Through a lot of hard work over the years with our municipality, with the kinds of increases that we've tried to make a political support for, we do have some centres that are close to parity. Funding and salaries have always had a direct impact on parent fees. This has meant that centres and boards of directors that have considered it a priority to raise salaries to be able to pay staff a reasonable wage have had to carry a burden of excessive parent fees.

As pay equity comes in at full provincial funding, it is important to continue the 1% of payouts to centres that have achieved parity with the regional municipality. This can then be used in the salary portion of the budget, holding the wages at the pay equity level while allowing other, already committed dollars to be used to decrease parent fees. This also ensures that those centres where fees have been held very low will not go on a better playing field by being able to now provide higher wages and maintain lower costs to parents. So



we urge the government to flow at least 1% of the total payroll into the salary proportion of the non-profit child care centres at 100% funding, regardless of the current salary level.

**Ms Campbell:** I just want to deal a little bit with section 21.17. We find it difficult to believe the new legislation would place as much emphasis on confidentiality as it has in this section, the section dealing with confidentiality of information which the all-female workplace has from the proxy comparator organization.

In all cases, according to the government's definition of the public sector and broader public sector, we're dealing with public institutions or institutions which are operating on public funds, and in many cases this information is already known through collective agreements or public minutes of boards or council meetings.

The fines have the potential of intimidating workers and committee members working on pay equity plans. Information used to bargain other plans in the public sector did not have this confidentiality of information required, and the whole notion is unnecessary. We urge you to delete subsections 21.17(1) to (7).

In conclusion, we want to thank you for providing us the opportunity of presenting our recommendations. Bill 102 is really very important to the child care community. It finally allows us to feel included in the right to fair and decent wages that are not based on our gender. This is an equally important recognition for our profession.

The direct operating grant and the wage enhancement grant were two important steps by the government to increase the salaries and benefits of people working in the child care field, but the wage gap does still remain and the importance of public funding continues to play a critical role in striving to achieve equity. Escalating parent fees alone cannot pay for better salaries and benefits. Public funds must be allocated.

We want to re-emphasize that without a limit or cap on the number of years it will take for child care workers to achieve pay equity, this legislation will be of little benefit to staff currently working in the field and it will remain a principle of pay equity rather than a reality.

For us, pay equity is complementary and integral to other initiatives such as child care reform and employment equity. Child care reform remains for many of us our greatest hope, and we urge the government to ensure that child care reform is a top priority. Adequate salaries are an important component, and all research indicates the important role that consistent, stable funding plays in the quality of care. All these initiatives can be seen as a way of fighting back against the recession. If you begin to pay people their worth, you'll reap the benefits through taxes and additional spending power. Let's fight the recession creatively, not on the backs of the lowest-paid workers and our children's future. Thank you.

**The Chair:** Thank you. Each caucus has about five minutes for questions and comments. Mr Arnott.

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**Mr Ted Arnott (Wellington):** Thank you for coming such a great distance to be here to present your concerns to us today. An excellent presentation. I think you very clearly indicated your support for some of the other groups

that have come forward, but also your own specific concerns as they relate to your own organization.

I'm going to deviate a bit off topic with one of my questions. In your conclusion, you say: "All of these initiatives can be seen as a way of fighting back against the recession. If you begin to pay people their worth, you will reap the benefits through taxes and additional spending power. Let's fight the recession creatively not on the backs of the lowest-paid workers and our children's future."

There's a program that the Ministry of Community and Social Services has funded in the past, since 1983, called special services at home. You may be familiar with it; it's a program for families with children with developmental handicaps. I have been trying for two or three months—probably there are two dozen families in the riding that I'm privileged to represent, Wellington, who can't get money for that program to fund it on an adequate basis such that their services are approximately equal to what they've been getting in years past, the services they need.

You're here because of your concern for children, and I guess I'm just exceedingly frustrated that I can't get this issue to the level that the minister will respond. I guess what I'm saying is there are a number of competing demands out there for government funding and justice is an important goal that we have to try and reach, but at some point there isn't the money there for justice, I suppose. How would you respond to that?

**Ms Cass:** I've heard that my whole working life. I've been working in the field since 1975. We have constantly been met with this whole issue, especially around salaries, because it really is what women often have the hardest time talking about, which is why it's taken us so long to see pay equity on the table. Often we're a sector that doesn't feel comfortable about putting our salaries out as an issue, and then as soon as you get the issue of the nature of the service put into the mix, which is what you're saying, the service that you provide versus your wages, it brings out an immediate kind of, "Oh, my God, not again."

I think we've had to deal with that. I think we've had to deal with it and in our local I think what we've seen is the benefit of paying people better. We are privileged to have unionized, to have worked hard, but we always do it hand in hand with the service issues. I think we've never lost sight of those competing interests, but having to put them together.

What we've also seen are the benefits of paying people adequate wages and so we've seen the benefits in terms of the children. We actually did a study on our local that looked at wages back in 1978. We had a turnover rate of 1.9 years. So every 1.9 years, the staff turned over. When we looked at it again in 1989, it was 7.9 years, the difference in terms of the length of stay that people stayed. All of a sudden, if we had an infant-toddler, pre-school kindergarten program, they knew the kids from the time they were infants to the time they went off to school and after. So we reaped the benefits in that in terms of quality of care.

I wouldn't stop struggling for your special-needs children and for integration services and we never stopped struggling for it, but I think we have to stop playing the two off against each other, especially when we talk about low-wage sectors. Somebody's making the money. The doctors are making the

money. It's not us, but somehow everybody feels real great about keeping the guilt on us. I guess we react to it because we don't know what to do with it.

**Mr Arnott:** I didn't mean to project that.

**Ms Cass:** No, but it's the struggle. I think those kinds of services should be—our union spends most of its time on political work, on lobbying for the wage enhancement grant, on the direct operating grant, on child care reform. We spend, I'd say, probably 10% to 15% of our time on negotiations because our parents aren't the ones who control the funding.

**The Chair:** Thank you, Mr Arnott. Mr Winninger.

**Mr David Winninger (London South):** I too would like to thank you for your presentation and for your general support for the thrust of Bill 102. I apologize for not being here for your presentation in its entirety, but as many members of the Legislature know, you often have to be in more than one place at once.

I was a little concerned when I heard you cite the example of the Wise Owl Day Care Centre not having a comparator right in Pembroke because the municipality is not funding day care. I checked with the ministry just now and it has drawn my attention to number 30 in a schedule the ministry has issued, which indicates that if there is no comparator in the same municipality, you can go to the nearest municipality operating a day care facility for your comparator.

**Ms Cass:** Well, that's what we want.

**Mr Winninger:** I think that should satisfy your concern on that ground.

**Ms Cass:** That's section 30?

**Mr Winninger:** It's number 30, I believe, to the schedule. Perhaps the clerk can provide you with a copy.

**Ms Cass:** We do have it.

**Mr Winninger:** Oh, do you? Okay.

**Ms Cass:** Yes. I'll check the schedule, but in terms of what we've been hearing, and I know the position of the other organizations in CUPE is that with the group-of-jobs approach, that in fact won't be what happens. So if you're saying and you can assure us that in fact that is what happens, that is what we would want, that we'd go to the next municipality operating for child care.

**Mr Winninger:** I see the ministry official nodding his head in agreement.

**Ms Cass:** I think you've heard that from a number of child care groups, that that is one of their concerns, that there's some equity there.

**Ms Sharon Murdock (Sudbury):** Just to amplify that, if it was just municipality, then your concern would not be addressed, but because the schedule states that your proxy group is a municipality operating a day care, that particular issue is covered.

Since you agree with the Pay Equity Commission's submission, one of the things it talked about was maintenance. Once a proxy group is found and so on, they would like it to be maintained, but with the proxy group, if there's an increase in the proxy, then there would be an increase in the seeking group and so on.

I am wondering as a union how you feel about that, because looking at it, it would mean then that there would be no point in negotiating for wages any more. I'm wondering why you're supporting that actually. Why are you doing that when part of your function is negotiating?

**Ms Cass:** I think the whole issue of maintenance for our local is mixed, and I think there's a couple of things going on here. First of all, I'd say for the last 15 years we've basically been tied to the wage increases our regional municipality has got. We don't feel like we have rights to bargain, quite honestly, in many ways. We feel that the political action part of it really is where we see our increases.

In some senses you're talking to a local union that bargains with our parent boards and doesn't feel a whole lot of control over the bargaining process, which is why we're supporting government initiatives in discussions around broader-based bargaining and sectoral bargaining. For us, those are key in terms of being able to bargain with who is funding the service. In terms of that issue, it then starts to tie you into the wage increases.

**Ms Murdock:** Particularly if you legislate it. I mean, if you put that into the legislation, the government, this government but future governments as well, will be saying, "You're going to be tied in."

**Ms Cass:** And I think our concern—I mean, we haven't put that in our proposal, and I think what we felt was that if you don't cap it, if you do not provide a cap, we don't know what's going to happen 43 years down the way. We do know the same staff will not be working in those jobs. We can assure you of that, okay?

**Ms Murdock:** God, I would hope not.

**Ms Cass:** They will be living in poverty. So I think that whole issue of the maintenance is problematic with us and I don't think we've worked through—

**Ms Murdock:** No. I wanted to hear that, though, because I didn't—

**Ms Cass:** We have not worked through it. I don't want someone to tie our hands in bargaining, but I must tell you very honestly, we feel like our hands are totally tied.

**Ms Murdock:** Because of the way the system works.

**Ms Cass:** Yes.

1010

**Ms Dianne Poole (Eglinton):** Thank you very much for a very articulate presentation today. Although we have heard from a number of child care groups, you have actually elaborated upon and provided us with new information, so I do appreciate that.

In the last page of your brief you say, "It finally allows us to feel that we are included in the right to fair and decent wages that are not based on our gender," and then, "The wage gap still remains."

It's actually quite timely that you make that point, because this morning in the *Globe and Mail* there was an editorial, which has been distributed to all members, and the subject is the "much ballyhooed 'wage gap' between men and women." The submission of the *Globe and Mail* editorial is that these articles don't take into account main ingredients of the wage difference such as education, hours worked and merit.



They make the further statement that "One would expect that since society's attitudes towards women's work and education have changed relatively recently, the difference in average wages would be least among the young." I'm sorry, I read the wrong section here. It said, "Women with a university degree earned more, not less, than men with lower levels of education." They go on to say, "When one considers that a majority of those enrolled in Canadian universities are female, it's hard to imagine a future in which the wage difference will not continue to narrow."

I just would like to put on the record that Ontario employment statistics from June of last year showed—and they had two categories, whites and other racial minorities—that among whites, women with a university degree earned 66%, that's \$31,000, of the income of white men with degrees, who earned \$48,000, and that racial minority women with degrees earned 56%.

I submit that while the Globe makes a valid point, it's not only based on gender; it is levels of education, it is various other factors. They've really missed the boat. Even with women flooding into universities over the last decade, flooding into the professions, there still is a gender gap. Would you like to comment on that? I know in your profession, for instance, you have a lot of people with child care degrees, early childhood education degrees, and they're still earning pathetic wages.

**Ms Campbell:** Isn't that what pay equity's all about? When you get down to your plans, you look at skill, effort, responsibility and you take away all those things which may account for some difference. You start from a level playing field and then you try to account for that gap that still exists, and that gap really does still exist after you take into account all those other factors.

There are other reasons why there are gaps, but once you account for those, then there's no other excuse except based on gender, and we are a rather well educated sector. I think we've had a national study recently that has pointed to that. We don't see any other way of accounting for the abysmally low wages in the sector.

**Ms Poole:** I had one other question, if I have time, specific to the legislation. On page 3 of your brief you say, "We would prefer to have female jobs in the all-female workplace compared to male jobs in the other organizations." This has basically been a unanimous recommendation of all the groups who have come before us.

One of the very valid points made by OAITH, the Ontario Association of Interval and Transition Houses, is that if you are comparing female jobs to female jobs in a comparator organization where those female job wages have depended on a pay equity plan, everything leads back to the integrity of that particular plan. So if the original plan was flawed, then the child care organization, for instance, that would be borrowing from that to compare the female wages to the female wages would also be flawed.

Jamie, I know that you've been very involved with the coalition. I think Nancy mentioned it as well. I know that the coalition was consulted with very heavily on the various models. Do you have any sense of why the government changed from its original model, which included comparing

female jobs to male jobs, to one that nobody seems to like because it goes away from the spirit of pay equity?

**Ms Cass:** I do know that in the consultation process for the pay equity bill there was an attempt to compare female jobs to female jobs and not even at the final male rate. I guess we saw some movement of at least comparing female jobs to female jobs but with the male rate of pay after the proxy organization has gone through pay equity. Again, for unions, they felt quite strongly about it because there are the resources to look at the male rates of jobs. We still would feel more comfortable to be able to do that.

I think you're right. It doesn't build on some of the inherent problems with different plans. Quite honestly, we have concerns about the plans in the regional municipality of Ottawa-Carleton. As a local union, it didn't really compare male and female jobs, so we're left with just sort of a total job evaluation plan which we will have to at some level—we can't question their plan, we're going to have to go with it.

I guess it was a political decision not to, and it's our right to really lobby that we think it should go back to the male comparator and allow our organizations—I think what we're seeing with this legislation is more and more of the rights being taken away from the seeking organizations to really have some control over the plan. In some way, that's fitting with all the other problems we see about having control over our sector. We don't support it.

**Ms Poole:** One of the principles of the current Pay Equity Act is the self-managed process, so really if this were amended, it would be in keeping with that original spirit too.

**Ms Cass:** Yes, but I urge you, more than anything, to put the cap on it. Without the cap, this legislation doesn't go anywhere for us.

**The Chair:** Ms Campbell and Ms Cass, on behalf of this committee, I'd like to thank you for taking the time out this morning and giving us your presentation.

**Ms Cass:** Thank you all very much. It was really a pleasure to come down and to make the presentation.

#### ONTARIO NURSING HOME ASSOCIATION

**The Chair:** I would like to call forward our next presenters, from the Ontario Nursing Home Association. Just as a notice to the committee members, our 10:30 presenters have cancelled, so you can note that. Good morning.

**Ms Paula Jourdain:** Good morning. How are you?

**The Chair:** Good. Just as a reminder, you'll be allowed up to 45 minutes for your presentation. The committee would appreciate it if you'd keep your remarks slightly briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Ms Jourdain:** Yes. Thank you for having us today. My name is Paula Jourdain. I'm past chairman of the Ontario Nursing Home Association. With me is Laurie Clarke. She's the director of human resources for Extendicare nursing homes.

Before summarizing our brief and our comments on Bill 102, An Act to amend the Pay Equity Act, I will give you some general information about the nursing home sector, its regulation by government and the current economic climate. I

will then outline some basic principles established by the nursing home association to guide pay equity implementation in our sector.

I will also demonstrate, through an explicit example, how the implementation of the proxy method of comparison without funding would result in a layoff of over 4,800 employees throughout the province and a reduction in patient care to a level which would place residents at severe risk.

The Ontario Nursing Home Association represents over 90% of the nursing home facilities and beds in the province of Ontario. Our members operate close to 300 nursing homes which serve 30,000 seniors in Ontario. We employ 25,000 people, the overwhelming majority of whom are women. In fact, health care aides alone comprise almost 60% of the staff in nursing homes.

Over 90% of the workers in our industry are unionized and there are close to a dozen different unions that we bargain with. The scope of our operations encompasses the entire province of Ontario. There are wide variations in the size of our homes and the ownership includes a variety of small single owners and multi-facility owners.

All homes, regardless of ownership or size, receive the same funding and must have similar staffing ratios. This widespread unionization, in conjunction with controlled funding, results in the development of industry-wide wage parity.

Nursing homes fall under the provision of the Nursing Homes Act which is administered by the Ministry of Health. The act and the regulations passed under its authority strictly control the revenue of nursing homes.

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These controls include the rate that can be charged to nursing home residents, the percentage of ward, private and semi-private rooms in a facility, the types of services covered under the Ontario health insurance plan's extended care program and the per diem payment that the Ministry of Health provides to nursing homes.

It is illegal for nursing home operators to charge residents fees that are not in line with government regulations. The regulations also specify the services and standards of care that must be provided to residents and establish a rigorous inspection process to ensure their implementation.

The implementation of long-term care reform later this year will provide envelope funding for nursing care. Each home will receive a set dollar amount for the provision of nursing care. Any wage increase not matched by a revenue increase will result in a direct reduction in the level of patient care provided by the home.

These controls on both the revenue and service side of our operations do not allow us the flexibility in implementing programs like pay equity. We cannot adjust our revenue or change the services we provide to our residents to offset the financial impact of pay equity however much we do support the general thrust of the legislation. Implementation must be managed within our existing base budgets, all the while ensuring there is no reduction in the quality of care provided to our residents.

The current economic climate in our industry is very poor. Sixteen nursing homes have gone into receivership since 1989 and many more are on the verge of receivership.

Chronic government underfunding of nursing homes has created many of these financial problems.

Nursing homes have been advised that they will receive no economic adjustment for January 1, 1993, irrespective of pending arbitration which will affect a significant number of our employees. We estimate that this arbitration will affect over 40% of current employees.

We recognize that the province is also under severe financial constraints which will limit its ability to fund the major impact which pay equity will have on our sector. If no funding is provided and pay equity goes forward as outlined in Bill 102, there will be a major reduction in the level of patient care provided by nursing homes.

In the process of reviewing the proposed Pay Equity Act, the nursing home association has developed a number of principles which we feel pay equity should observe if it's to be effectively implemented in our sector. They include:

- Maintaining the existing relative equity of the wage grids of our employee groups.

- Preserving the industry-wide equity which currently exists in our wage grids because of the high degree of unionization and the collective bargaining in our industry.

- Province-wide adjustments to maintain provincial equity in our industry. This principle reflects how we are funded and regulated. It is the reality of our labour marketplace and the pay equity process must reflect it or it will diminish the existing geographic equity of our industry.

- Ensuring that through appropriate timing of the pay equity implementation process labour market disruptions do not occur. Posting of pay equity plans and the allocation of government funding should be done uniformly across the industry and the province. This will prevent situations where some facilities manage to complete the pay equity process ahead of others and realize a competitive advantage by being able to recruit staff at increased wage rates; and

- Pay equity implementation must be fully funded by the government to ensure there is no reduction in the quality of care provided to residents.

The ONHA originally supported the proxy comparison process if its implementation followed our major principles in the consultation paper. We felt it was well suited to application in our industry.

We now believe the proxy comparison, as defined in the current act, would put us out of business. Specifically, we are concerned about the selection of the proxy organization and the necessity to match the job rates of the proxy organization.

Using this system we would be forced to accept salary policy lines of another organization which may be funded differently than the nursing homes. The principles of salary administration are also compromised. The internal equity within an organization would be skewed by an external reference point. There is also no way that pay equity could be maintained over time.

The proxy method, as outlined in the act, is administratively cumbersome for both the seeking organization and proxy organizations and requires the provision of information that is constantly changing and not readily available. Confidentiality is also a major concern. While fines are provided for it will be impossible for organizations to use the information only for pay equity purposes.



The following example demonstrates how the implementation of proxy comparison could destroy the nursing home sector.

If an Ontario nursing home which currently receives approximately \$78 per resident day was to use a Metropolitan Toronto home for the aged which is funded at \$135 per resident day as a proxy organization, the following would result: The key female job class in both organizations, the health care aide position, would be compared. At present, the master labour contract covering over 40% of our sector has a wage rate for this position of around \$13 per hour. The Metropolitan Toronto home for the aged wage rate for the same position is \$18 per hour. If we match wage rates as identified by Bill 102, the cost difference for a 100-bed nursing home at the current staffing level approved by the Ministry of Health, which is currently 2.25 hours of resident care per day, would be \$410,625 annually.

At current rates the implementation of this pay adjustment would require a reduction of 31,586 hours of care per year and the layoff of 16 full-time positions for each 100-bed nursing home and 4,800 staff across the province in the nursing department alone. The resulting level of care provided to the home's residents would be 1.38 hours per resident day. This level of care is below the minimum legislated by the Nursing Homes Act and would place our residents at severe risk.

We simply cannot match wage rates of proxy organizations without full government funding of the differential.

If nursing homes are forced to use proxy comparisons, then we must be able to match percentage increases, not wage rates. The pay equity adjustment received by the key female job classes in the seeking organization should be equal to the percentage pay equity adjustment received by the comparator job in the proxy organization. This same percentage increase would then be paid to all other female job classes. Using our above example, if the Metropolitan Toronto home for the aged health care aides received a 5% increase as a result of pay equity, then nursing home health care aides and all other female job classes in the nursing home would receive a 5% increase on their rate.

Allowing nursing homes to match percentage pay equity increases rather than job rates allows us to maintain the existing relative equity of the wage grids of our employee groups. If all nursing homes used the same proxy, we would maintain sector-wide equity and have consistent province-wide adjustments. However, every pay equity adjustment received by nursing home staff will result in a corresponding reduction in staff and resident care unless it's funded by the government.

In examining the list of scheduled organizations originally circulated by the Ministry of Labour, it would appear that provincial psychiatric hospitals and public hospitals are possible comparators.

The act is silent on a number of key factors regarding proportional value. Of most importance is the number of male job classes required in an organization to implement pay equity.

Most nursing homes have only one male job class, the maintenance position. For proportional value to be used in nursing homes, we must be allowed to proceed using only one male job class.

Some homes may have no male job classes as the maintenance function is contracted out. In these situations

it is imperative that a male comparator be selected from a nursing home within the same municipality or county, a similar argument that was made by CUPE just before us. This will maintain sector-wide equity and prevent one home from experiencing wage adjustments that are significantly different from the rest of the sector.

If the act was to require that more than one male job class be used as comparators, then 80% of nursing homes would be forced to use proxy comparison. As pointed out above, using proxy comparators with the job rate requirement would be devastating for us.

Regardless of the method used to implement pay equity, its application may cause a unique problem in the nursing home sector. While we are considered public sector for the purposes of pay equity legislation, our homes are owned and operated almost exclusively by private sector companies. Many of these companies engage in business activities other than the operation of nursing homes.

For example, one of the large nursing home chains also operates a home care services division. Under the existing pay equity scheme, this part of the corporation would also be subject to pay equity adjustments by way of proxy comparison, yet its comparators in the home care field would not. The higher wages that may result from pay equity would significantly disadvantage our members' ability to compete in the home care industry.

A further, albeit more unique, example is a company that owns both a nursing home and a car dealership. If pay equity is implemented on a corporate basis, it would mean that a car salesman would be brought under the scope of the legislation in a way that was never intended.

Finally, the application of pay equity on a corporate basis will create problems for most of the management companies involved in the operation of nursing homes because they also engage in other forms of business which were not intended to be covered by pay equity.

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For these reasons, we propose that pay equity should be applied to the operating entity of a company rather than the corporate entity. This minor change in the application of the proposed amendments will avoid implementation problems for the companies operating in our sector. We also suspect that this issue will probably have arisen with your consultations with other groups as well.

The nursing home association supports the principle of pay equity and would like to see pay equity implemented in the nursing home sector in a timely and effective manner, if the principles of equity we have set out in this paper could be achieved. The timing outlined in the act is totally unrealistic. It is impossible for us to implement retroactive increases given the current funding crisis facing nursing homes.

We have grave concerns that the implementation of proxy comparison as outlined in the current act would result in the following if the funding of pay equity was not provided: The layoff of 4,800 staff members in our nursing departments alone and the reduction of nursing care to a level that would place nursing home residents at severe risk.

If full funding was provided by the government and the act remained in its current form, the government would be required to add over \$410,000 for every 100-bed home.

Across the province, this would result in an expenditure of over \$123 million annually. The pay equity process outlined in the act may be relevant to competitive organizations which have a number of male and female job classes and which are able to match wage adjustments to revenue.

As outlined in the paper, nursing homes cannot adjust their revenue, and any wage adjustment must be matched by service reduction. The implementation of proportional value, using a minimum of one male comparator per establishment, would allow nursing homes to achieve the objectives of the legislation.

We support the importance of increasing the relative wage rates received by women but would suggest that for those female jobs which are primarily funded by the government, ie, health care aides, nurses, registered nursing assistants, that the government should consider setting sector-wide wage rates relative to funding. This would eliminate the need for significant administrative time and expense which would be required using a full pay equity review and which in turn would free up management to concentrate on the provision of quality care to our residents.

As CUPE stated just before us, we support sectoral bargaining. It's reality that the government is controlling our increases; we're not able to control them ourselves. Thank you very much for listening to our presentation.

**The Acting Chair (Mrs Irene Mathysen):** We have about 23 minutes left for questions, and we'll begin on the government side with Mr Winninger.

**Mr Winninger:** I'd like to ask whether you've explored the implications of Bill 101 on long-term care to some of the arguments you made here. For example, on page 4, where you address the problem of comparing salary policy line for nursing homes to organizations that may be funded differently from nursing homes.

My understanding of the effect of the long-term care legislation would be to bring some equity to the per diems, whether you've got someone receiving long-term care in a nursing home or a home for the aged, which would make the proxy comparisons perhaps more valid in your view.

**Ms Jourdain:** Over a long term, I would have to agree with you. In the short term, I would disagree. Bill 101 will adjust our per diems. However, the municipal homes for the aged under the current prospectives of Bill 101 will still have the ability to provide additional funding. Any homes that are charitable homes or municipal homes can still receive enhanced funding through their supporting agency, whether it be the municipality or whatever.

At the present time the municipal homes receive a substantially higher wage rates than we receive. I would suggest that over time, as our funding levels do equalize, probably our wage rates will equalize throughout across. Whether it's male jobs or female jobs, they'll equate, but that will take some time and that certainly is not the case at the present time.

**Ms Murdock:** I have one quick question in regard to some of what you were saying on page 4 in regard to proxy comparisons. In that you agreed with the proxy comparison basically, the concept of proxy comparison, is it the fact that the group that would be chosen as the proxy comparator having to do that work and also having the decision? We've heard it

from other groups saying that they have the decision to make the wage differential or the salary parity decision for the seeking group. Is that your main concern?

**Ms Jourdain:** Our main concern is to have to match job rates. There's absolutely no way we can match the rates of another organization because of certain—

**Ms Murdock:** Because of your funding?

**Ms Jourdain:** Yes.

**Ms Murdock:** But in terms of proxy and the concept of proxy, I'm not understanding you to mean that you disagree with that?

**Ms Jourdain:** If we could match percentage increases, we would be more supportive of proxy. It's still administratively very cumbersome and we still have concerns about confidentiality, but we would be more comfortable if we could match just relative percentage increases.

**Ms Murdock:** The funding aspect of it is your concern, rather than the principle of it or how it would be utilized.

**Ms Jourdain:** That's right.

**Ms Murdock:** Because my question was going to be, what other method would you suggest?

**Ms Jourdain:** The proportional will work if we can use one male job comparator. That's the other way.

**Ms Murdock:** In terms of the confidentiality, you heard the group before you express its viewpoint that the bill was overly concerned with confidentiality, which was unnecessary. We've had that exact same kind of view expressed by any number of groups all week who have said that we are too concerned with confidentiality. I know that one of the reasons we put that in was that we don't want any proxy employer feeling like its information is going to be spread willy-nilly throughout whatever.

**Ms Jourdain:** I think the group you had before you, CUPE, was representing union interests. In our situation, we would have to compare union and non-union jobs. The union information obviously is public knowledge. Their contracts are public knowledge. That would be why they wouldn't be as concerned, I would think. But the non-union and the management positions would be confidential and should remain confidential.

**Ms Murdock:** You think they should even be stricter then, that the sections of the act should even be more—

**Ms Jourdain:** I think we just have to be very careful about confidentiality and I think it's probably unrealistic to expect that it will remain confidential, given the requirements of the act and the information that has to be provided between the two organizations. That's why it's very crucial that the proxy organization that's selected—that you find the right one.

**Ms Murdock:** Yes, okay. Thank you very much.

**Ms Poole:** Thank you very much for your presentation. You certainly, I think, have opened a few eyes today as to what the implications of this legislation are for your sector. I think it was on the final page of your brief that you talked about the implications if proxy were administered and you weren't fully funded.

**Ms Jourdain:** Yes.



**Ms Poole:** You also talked about the implications of what would happen if you were fully funded and what it would cost. Quite frankly, what you've provided us with today is more of an economic analysis than we have received from the government. We have asked them about cost, we have asked them whether they are going to guarantee they will pay the costs of not only the pay equity plan itself but also of implementing it, and there's been utter silence.

**Ms Jourdain:** Obviously we haven't even addressed the cost of implementing it here.

**Ms Poole:** That's right.

**Ms Jourdain:** We just have to pick that one up, but yes, this is the actual wage differential cost.

**Ms Poole:** I must assume from a comment you made in this brief that you were consulted by the government when it was drafting the legislation.

**Ms Jourdain:** Yes. We made a presentation last year at this time on the original brief and then we are back again.

**Ms Poole:** At the time that you submitted your brief to the government and they consulted with you, did you make it clear that bringing in the proxy method the way they were going to would be financially disastrous for your industry?

**Ms Jourdain:** Yes.

**Ms Poole:** Did you also ask them for some sort of guarantee that they would be picking up these costs?

**Ms Jourdain:** Yes.

**Ms Poole:** What I'm interested in is the response that they gave if they knew the financial repercussions. You've stated here it would cost an additional expenditure of over \$123 million annually, and this is just for nursing homes. This is not including all the other proxy sectors.

**Ms Jourdain:** That's just our nursing department. That doesn't cover our other departments.

**Ms Poole:** Right.

**Ms Jourdain:** It doesn't cover food service, which would be another 20% on top of that.

**Ms Poole:** It doesn't include what they would pay out for proxy comparators, for instance, for the child care sector or the shelters or libraries or the home care sector? What you're basically saying is that this could be astronomically expensive, and yet it appears, from what the minister said on Monday, that they've done no economic analysis. Certainly, they have not shared anything with you.

**Ms Jourdain:** We haven't received any information on that.

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**Ms Poole:** Nor any assurances that in fact the government would—

**Ms Jourdain:** No. As a matter of fact, we received a questionnaire—I guess it was sent to all organizations—with regard to assistance in achieving pay equity. It was exclusive of for-profit enterprises, so we would be excluded, it's our understanding at this point in time, from any financial assistance. That's why we have major concerns.

**Ms Poole:** In your brief, you made it clear that as of January 1, 1993, you were frozen.

**Ms Jourdain:** That's correct.

**Ms Poole:** You received no new assistance, even though your costs had significantly escalated and there were implications from arbitrations. That is one of the major concerns I have with what this government has done. They've gone ahead and said, in a very political way, "We are going to proceed with proxy; we are going to do this wonderful thing for women," yet they are going to do a number of things. They are going to either put the province out of business with the deficit increasing significantly; they're going to put the private sector in your area out of business—

**Mr Alvin Curling (Scarborough North):** Busy government.

**Ms Poole:** We don't know what they're going to end up—

**Mrs Elinor Caplan (Orillia):** They don't know what they're doing.

**Ms Jourdain:** We can't argue with the principle of pay equity.

**Ms Poole:** No.

**Ms Jourdain:** You can't argue that. The reality of the financial situation facing the province and the reality of fully funded organizations like—administratively, this is going to be so expensive, just administratively. Nurses are nurses are nurses. All nurses are funded by the government in some way or another, and the same with the child care workers. It's a set group. As opposed to spending hundreds of thousands of dollars on evaluating all of them, why doesn't the government say, "We think child care workers should be making X and nurses should make Y," and God, why not add the doctors in there too? I don't care, You know what I mean?

The reality is that we don't have control either. CUPE was sitting here, saying, "We don't have control." We're the employers, saying, "We don't have control." The government is the one that's controlling the purse-strings and it's the one that has to establish the level of service, because there's a direct correlation. Whether it's child care, whether its nursing homes, any of these service businesses are controlled by the government's input, so the governments are the ones that can determine both the wage rates and the level of service they want. They have to make that decision.

**Ms Poole:** So that if they proceeded with wage enhancements for these female jobs, basically in ghettos, then that may be a much simpler way to do it, a much more direct way to do it.

**Ms Jourdain:** Yes.

**Ms Poole:** Secondly, it would also ensure that the government would be picking up any cost and that the government could do it in a fiscally responsible way. They could have a set period when they say the guarantee is there that these women's wages will be raised, give them that security to know that it's going to start now and it's going to continue, but at the same time have some control.

**Ms Jourdain:** Yes.

**Ms Poole:** Quite frankly, it sounds like they really didn't know what they were doing.

I just have one last question. We had a brief from the Ontario Association of Interval and Transition Houses yesterday. So far,

we've only heard from three groups that would be affected by proxy: your group, the shelters and the child care workers. The child care workers are very supportive of proceeding with proxy, although they aren't very enamoured of the way it's being done. The shelters were very critical of proxy and thought that without the additional resources, it was just going to add a burden. You have in essence reiterated this.

The final line from the Ontario Association of Interval and Transition Houses' brief was, "In conclusion, and to state our case most plainly, we wonder if the cost of achieving pay equity will prove to be greater than the results." Their concern was that they would end up laying off women and creating harm to the sector if the resources weren't there. I must assume from your comments you'd share that.

**Ms Jourdain:** Yes.

**Ms Poole:** The Ontario Nurses' Association also said that it rejects the government amendments regarding proxy. It sounds like a number of the groups representing women are not as sure as this government seems to be that proxy is the solution. Thank you very much.

**Mr David Tilson (Dufferin-Peel):** I must say that this is a topic that's been of great interest to me, and I've been waiting for someone like you to appear.

**Mr Arnott:** You've waited four days.

**Mr Tilson:** I've waited four days, yes. I might say your brief is excellent. If I speak in the House, you may hear part of it read back because it's such a good presentation. I congratulate you for it. Many of us get personally involved in this topic as our hair gets greyer, and also we have parents. I have a mother who is in a retirement home in Orangeville which is attached to a nursing home. It's privately run, so you get to talk to the staff and the nurses about the problems, the reduction. When I speak, I don't want to be speaking in a detrimental fashion of this particular residence, because I think it's excellent, but clearly the problems are the same throughout this province: lack of funding. It's a never-ending problem.

The owner of this particular residence had another residence in another place, I think, that had grave financial difficulties. I've had chats with him and I believe that these people can run these places more efficiently than the government can. Aside from this issue, I get concerned when nurses come to me and say: "So-and-so works in a government-run place, and my wages aren't anywhere near hers. An RN over there is different than an RN here." They even compare themselves to nursing assistants, RNs being paid the same as nursing assistants.

I watch legislation approach like this, and notwithstanding the problem, the inequities of pay equity—although I, too, was interested in the *Globe* editorial this morning, as I'm sure you were, and there may be room for debate on that as well, but it raised some good issues.

I'd like you to spend a little more time, for the time that's allotted us to question, on the concern I have for the continuation of retirement homes and nursing homes, the privately run ones in particular. As our population gets older, as we all get older, we start wondering where we're going to go, and we start wondering where we're going to put our parents and those types of areas. I hear of retirement homes and nursing homes that are simply going down the tubes. They can't afford to operate

for whatever reason. I get concerned, as you do, about the quality of care. Again, I hate to talk like this because it's as if I'm being critical of the health care, and I'm not. I think the particular residence my mother is in, for example, is an excellent nursing home, but it's quite obvious that the funding is being emphasized in another area. The funding is being given to government-run operations. That's okay.

I honestly believe that this government, or any government, cannot run long-term health care. They can't do it. They don't have the money for it. I think they're suddenly realizing that. When they were in opposition, they may have thought that, but they're now in government, and I think they're suddenly realizing it's impossible for them to do that, notwithstanding their philosophical decisions that were made a year ago or—I forget when the decisions were made to change the funding. I'm sure you could spend some time on that.

Finally, if I can get to the area I'd like you to respond to, acknowledging all these lack-of-funding problems, acknowledging all that, you referred somewhat in your brief to where you wonder, you're postulating where we're going to go. If the funding isn't there now and we're going to have this pay equity, notwithstanding the inequities you're talking about, comparing yourselves to other jobs, whether they're female, male or whoever, notwithstanding that argument, if the funding isn't going to come now, what's going to happen?

I'm not talking about jobs. We're talking about justice for all. I am concerned about my mother, as you are too. I'm concerned about her care. I'm concerned about the fact that the quality of care is going to deteriorate, that there isn't enough money there. It's fine for nurses and day care people and other people to come in here and say, "We're being treated unfairly," and yes they are, but what about the rest of the people? What about my mother? What about your mother? What about your father?

**Ms Jourdain:** I think that Bill 101, the nursing home amendment act, which is trying to equalize the funding between nursing homes and retirement homes and bring us under a common piece of legislation, is really a forward-looking document, and we are excited about the implementation of that.

Albeit we'll be presenting a brief to them with comments on it, we look forward to the implementation of long-term care reform. We support the government's goal of moving to community-based care, but we also know that there's always going to be a role for facilities. Those facilities should be run on an equal ground, whether it be government-run or privately run, with the same funding so that we can show the kind of care that we can deliver. Obviously, that is our fundamental priority now, to ensure that we get equal and fair funding so that we can provide the quality of care to our residents. That's our number one goal.

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**Mr Tilson:** But the difficulty is that it's fine to have all these wonderful papers. This very legislation says: "Sorry, we're broke right now. We'll have to wait three years or two years or whatever." Aren't they liable to say the same thing, "Yes, we'll give you some more funding, but right now we're not in very good shape"?



**Ms Jourdain:** One of the things that Bill 101 does that the NDP has been very courageous in implementing and is still being courageous in implementing—I hope it doesn't go down the tubes—is the increase in the co-payment rate, so we're putting more responsibility on to the recipients of the care. By and large, in my experience in my job—I manage three homes—most of those seniors do have funds and they are able to add more. I think the change in co-payment that's being proposed is a courageous move that I'm sure will be politically difficult but will add more money to the system through the recipients. I think if we can stick to Bill 101 and get it passed, albeit with whatever amendments are required, that's a major step forward.

**Mr Tilson:** All I know is that there are substantial increases to the seniors in this province who are living in these places. The increases they're paying monthly are being increased substantially for whatever reason, and I fear there's only so much money. I use this with almost every delegation that comes forward. There's only so much money in the pot and I—

**Ms Jourdain:** But the seniors are starting to pay for more of their own care. Right now it doesn't matter how much money you have. You go in and you're practically totally funded by the government. That's really not fair if you have the money to provide for your own care. The system that is being proposed whereby the amount that you would be paying would be relative to the amount of income you take in looks like it's a fair system. I think that's a major step forward, but we've got to get this thing through. It's already been delayed and delayed, so the key point is to get it implemented.

**Mr Tilson:** I understand, and that's what this bill's all about, of course: the issue of delay. I guess my big concern with the topic you're here about today is, where's the quality of care going to go with respect to long-term care and what effect will the implementation of pay equity, given this government's—fine, as I say, all these papers are coming out—given what appears to be delaying, unless it just lets the deficit go wild, which is another alternative for it; it could just let the deficit go wild and implement it, because if it doesn't do that, there's no money, unless they tax us all to death.

Hence I get back to my first concern on the topic that you have before this committee, that the quality of care in long-term care is going to deteriorate unless there are big dollars generated. The implementation of pay equity, the way it's been presented now, without all those moneys, is going to cause the seniors in our province to suffer.

**The Chair:** Thank you, Mr Tilson. Ms Jourdain and Ms Clarke, on behalf of this committee I'd like to thank you for taking the time out this morning and giving us your presentation.

#### ONTARIO HOSPITAL ASSOCIATION

**The Chair:** I'd like to call forward our next presenters, from the Ontario Hospital Association. Good morning. Just a reminder, you'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks slightly briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Mr Roger C. Sharman:** Thank you, Mr Chairman. I'd first like to introduce my colleagues, Mr Paul LeMay, who is managing director of the negotiation and consultation services of the hospital employee relations services of the Ontario Hospital Association, and Mr Brian Siegner, who is the vice-president of hospital employee relations services for Ontario hospitals. My name is Roger Sharman, and I'm the chairman of the Ontario Hospital Association pay equity advisory committee and also president of the Orthopaedic and Arthritic Hospital here in Toronto.

We thank the committee for the opportunity to appear before you this morning. The OHA is a voluntary association of all 223 public hospitals in the province of Ontario, and further information on OHA is attached as appendix A.

The hospitals of Ontario are collectively one of the largest employment sectors in the province, with some 160,000 full-time and part-time employees. Wages and benefit costs represent the largest component of any hospital budget, between 70% and 80% of all costs. Any cost increases relating to employees, therefore, have a considerable impact on hospital budgets, particularly in the present climate of recession and government fiscal restraint.

Cost increases typically involve matters such as wage and benefit settlements or arbitrated awards, increases in UI, WCB and pension assessments, health and safety training and, of course, pay equity.

We want today to deal directly with the matter before you, which is Bill 102, and also to draw to your attention some matters not addressed in the bill but which are of crucial importance to our sector.

By way of introduction, let me say that hospitals have had an opportunity to respond to Bill 168, the predecessor of this bill, and we appreciate that a number of our concerns have been addressed by the government in the new Bill 102, particularly with respect to proxy comparisons.

We also appreciate the changes in implementation dates, not only with respect to proportional value and proxy comparisons, but also the extension to January 1998 for achieving pay equity. Although we still feel it would be better to include a specific proportional value methodology in the act itself, our purpose in appearing before you today is more to focus on three issues that go beyond the proposed amendments. The first relates to an issue commonly referred to as stacking, the second to maintenance and the third to funding.

**Stacking:** It's been our understanding that the purpose of the Pay Equity Act is, in brief, to provide a scheme whereby a female job class that is paid less than its male comparator will have its pay rate increased to equal that of the male comparator.

I would bring to your attention a matter involving Glengarry Memorial Hospital in Alexandria and the Ontario Nurses' Association. The Pay Equity Hearings Tribunal, in a decision dated June 9, 1992, held that a pay equity adjustment of 37 cents per hour, this amount representing the difference in compensation between the female job class and its male comparator at that hospital, must be paid as of January 1990, in addition to the negotiated wage. This decision was given even though the new 1991 negotiated nursing wage rates resulted in compensation for the female job class exceeding that of its

male comparator. The text of the complete decision is appended to these remarks.

Hospitals believe very strongly that the decision was wrong. They have applied to have it judicially reviewed. The Ontario Nurses' Association, however, believes that "...any pay equity adjustment is separate and payable in addition to the collectively bargained rates of pay."

While hospitals have had success in reaching agreement on pay equity plans with many of the unions representing their employees, they have had virtually no success in reaching agreement with ONA. It is clear that this Glengarry decision only compounds and complicates matters and serves but to further delay completion of pay equity plans for nurses.

We would ask that this committee address the issue. We would ask that you consider making changes to the bill to clarify that pay equity adjustments should not be stacked on top of negotiated increases to achieve a result whereby the female job classes are in fact paid more than the male comparator. We submit that such situations violate completely the original aims and internal logic of the Pay Equity Act itself.

**Maintenance:** The act requires that every employer shall establish and maintain compensation practices that provide for pay equity. The pay equity office is of the view that employers will be required to track the pay relationship between each female job class and its male comparator for ever. We would appreciate wording in the bill that would make it clear that there's no requirement to continue to track these relationships once pay equity has been achieved.

1100

**Funding:** OHA has consistently brought to the attention of the government the need for funding to pay for pay equity. To date, the Ministry of Health has provided some funding for hospitals with completed pay equity plans. While the costs of pay equity adjustments for hospitals cannot be known until all pay equity plans are completed—and the largest group of employees with plans outstanding are nurses—we believe it is critical that you understand that any shortfall in the funding of pay equity can only impact adversely on areas of patient service.

We thank you very much for your attention. That completes our presentation, and we are prepared to answer any questions you may have.

**The Chair:** Thank you very much. Each caucus has about 20 minutes for questions and comments.

**Ms Poole:** Thank you very much for appearing before us today. I think the Ontario Hospital Association made a round of visiting caucuses last year. I know you came and made a presentation to our particular caucus and one of the things you discussed was pay equity. I think the Ontario Hospital Association made it very clear that it felt transfer payments from the government had not been sufficient in the last number of years to cover the pay equity adjustments you were making in your sector.

I wonder if you would comment on the whole area of transfer payments. What is going to happen if further pay equity provisions are put in for your sector without the funding to match them?

**Mr Sharman:** It's difficult to speculate precisely. As you well know, hospital budgets are flat-lined for the next two

years. That knowledge we have in writing. Obviously, any increases in costs will have to be managed in a flat-lined budget. I think one can only predict that services would be cut and some jobs would suffer accordingly. It's very hard to speculate. It depends a great deal of course on the magnitude of the issue in terms of how much we are going to have to pay and whether there is any funding to help with that problem.

**Ms Poole:** Would you perhaps like to be a little more specific for 1992, or for 1991 if those figures are a little more accessible for you, since 1992 just ended. What kind of funding did you get from the provincial government for purposes of pay equity?

**Mr Sharman:** I couldn't answer that. I'm not sure if either of my colleagues can.

**Mr Paul LeMay:** I can't give you the precise numbers off the top, but I think it's fair to say that the numbers the Ministry of Health has set aside to pay out completed pay equity plans have certainly been sufficient to address the pay equity plans that have been completed, and there has not been a shortfall in that respect.

The difficulty is there is still the unknown of what the final cost for previous years is going to be. Our best expectation is that there is going to be a shortfall between the numbers Health has set aside, which have not yet been utilized, and what the ultimate costs are going to be.

To try to put a numeric framework on it is a bit difficult, but 1% of payroll for hospitals is in the order of \$53 million for the upcoming fiscal year. The funds that Health has been setting aside, as I understand it, are between 0.5% and 0.75% of the payroll, depending upon the year you're addressing. So you're looking at a shortfall on an annual basis of somewhere between \$12 million and \$26 million order-of-magnitude numbers.

**Ms Poole:** Is it a matter of giving on the one hand—for instance, the government could say, "These funds are specifically targeted for pay equity"—yet on the other side of the coin, if the transfer payments have been flat-lined, it has taken away? While publicly there appears to be that support for pay equity, your increases in other areas have had to come from somewhere, so the final picture means there have been significant cutbacks.

**Mr LeMay:** Exactly. There have been cutbacks, yes.

**Ms Poole:** I think Mrs Caplan has some questions.

**Mrs Caplan:** Do you have the statistics on how many of the 223 hospitals have completed the successful negotiation of a pay equity plan?

**Mr Sharman:** There are very few. I don't have the actual number. Paul may have. You will appreciate that almost every hospital that has Ontario Nurses' Association certification does not have a completed plan. Only those hospitals that are not certified with ONA—there are about 40—have that potential. Of course, many of them are very small and are waiting for the proportional pay and proxy pay to come through. So a very small number have a completed plan.

**Mr Brian D. Siegner:** If I may clarify, with respect to pay equity, it's fair to say that we're referring to agreements concerning the Ontario Nurses' Association, which does represent the vast majority of nurses who are unionized. With respect



to other unionized employees and non-unionized employees, our sense of it is that the vast majority of plans are either agreed to or implemented. In fact, I think our sector was the first to have a multi-employer plan with the Service Employees union. So a lot of work has been done. The one group that remains incomplete is with the ONA.

**Mrs Caplan:** For those that have negotiated and completed plans in the other sectors, did you find, as they were completed, you were able to use the job-to-job comparison in all of those plans successfully? Was the estimate of the cost, the 1% over the four to five years that was contemplated by the pay equity legislation of 1987—I'm asking about what the experience has been with that legislation, because this bill that's before us is looking to make some substantive changes to that legislation.

**Mr Siegner:** Certainly with the groups other than nursing it's fair to say there were male comparators found and there were pay equity adjustments for a number of female job classes.

**Mrs Caplan:** Do you know of any of your hospitals that were using or contemplating using or had begun to negotiate using the proportional value method, which is permissive? In other words, it doesn't say they must use it in the existing legislation, but they could use it. Do you know of any of the plans that were settled or negotiated that used it or any that are under active negotiation now that have begun using it?

I guess the time line I'm looking for is when the former Minister of Labour, Mr Phillips, announced in March 1990 that proportional value was going to be included in legislated amendments. It was my understanding that many employers began to incorporate that in their negotiations.

**Mr LeMay:** It may be, Mrs Caplan. It's difficult to be precise, because there's a huge range of pay equity plans out there and we do not have a database that relates to what each hospital has done. Against that backdrop, building on Mr Siegner's comment, even where we have completed pay equity plans and have found comparators for many female job classes, it would not be uncommon at all to find that within those plans there may be one or more female job classes for which there was not a comparator and where you will have to go back in and reassess the situation under the proposed amendments.

The next question, dealing with the practical application of proportional value—I'm sure there are some hospitals that have identified some rough-and-ready methodology of saying: "We think there should be some adjustment here. Even though the job-to-job comparison methodology has not delivered an adjustment, we're trying to maintain some relativity from job to job." Whether they've gone through and simply done it in a rough-and-ready manner, whether they've gone through and given one female job class the same adjustment that a related female job class has been given, I'm sure you'd find a variety of actions that have been taken. In that respect, it certainly would be helpful to have those kinds of adjustments grandfathered as being appropriate.

1110

**Mr Arnott:** Thank you, gentlemen, for coming in today to express the concerns of your association. I think you've raised three excellent points.

The stacking provision you mentioned I think is very clearly outside the intent of the government's legislation dating back to 1987.

Maintenance is a very important concern to me, because if you listen to the advocates of this brand of pay equity, they feel there are going to be efforts put forward to achieve true pay equity, to eliminate discrimination based on sex. At some point, I suppose, if the government's efforts are successful, we achieve true pay equity at some point, and then I assume you close that pay equity off because there's no greater need for it. But if they are under the impression that we've got to be vigilant for the next 2,000 years, I have questions about that.

And you raised an important point about funding: that the government is ultimately going to be paying for this. Many of my questions through the course of the past week have been related to cost. I submit to the government that there has not been a defined cost for the implementation of pay equity, a figure that has been presented, of what it has cost the government and our society over the past six years now since the passage of the Pay Equity Act. I believe it's my responsibility as a member representing people in Wellington county, before I make a decision on this, to see what it is going to cost them, yet we have witnesses coming forward who make a claim that this is justice. Well, justice at times is a subjective concept, and we have to see what these things are costing before we go ahead with them.

**Mr LeMay:** In fairness, Mr Arnott, from the hospital's perspective we do not have a sense that either proportional value or proxy comparison will add significantly new costs, because in many cases through one form or another hospitals have an expectation that they will be able, under the existing legislation, to find an adjustment for most of their female job classes. It's not that there will not be future costs, but the larger portion of those costs has proceeded.

The costs certainly do continue to be significant not only within hospitals but even within the bureaucracy required to track the maintenance issue. If you're going to retain a pay equity office until the year 2052 or 2500, you obviously have ongoing costs that you have to question the value of. It's not a question of being opposed to attempting to achieve pay equity; it's more in the context that once that job is done, you should be carrying on in those new relationships without having to follow this kind of bureaucratic approach.

**Mr Arnott:** Certainly everyone supports efforts towards true pay equity and total elimination of discrimination. I guess where we differ with the government is the way it is going about it. Can you tell me what it has cost hospitals in Ontario, an aggregate number since 1987, to implement pay equity? Does anyone have any idea, the Ontario Hospital Association?

**Mr Siegner:** It's very difficult for us to quantify that. If I can explain, part of the reason for that is that we have a significant portion of our employees, represented substantially by one union, who are not settled in terms of a plan. We had estimated, I believe, back in the late 1980s, that the cost of the legislation as we saw it then, ballpark, would be about 5% of payroll over its term. That was an estimate. We haven't really got the experience at this point to be able to confirm whether that's going to be high or low. Certainly, as my colleague just

pointed out, the amendments will add something to that, but it's even more difficult to quantify that.

**Mr Sharman:** I think it's fair to say that the concern about stacking is that it would be more expensive to the Ontario hospitals than proportional and proxy pay. That's just a feeling, but I think it's a very real feeling of concern in that regard.

**Mr Arnott:** The Ontario Nurses' Association has told this committee that there is enough money being expended within the health care system to allow for continued efforts towards pay equity. I guess what they're saying is that there are efficiencies which have yet to be achieved within the system so that patient care will not suffer, but pay equity, according to this bill, won't cost anything additional if we find it in additional efficiencies. What do you have to say about that?

**Mr LeMay:** I think the reality is that you will have additional cost. The question is, where do you get that money from? It has to come from somewhere, so if you're not being flowed additional funds, that means you have to find them elsewhere in your budget. It's very easy to claim that there are more efficiencies that can be achieved. I think it's been widely recognized that hospitals have constructively addressed the practical funding problems that exist and are consistently attempting to find new and better ways of delivering the quality of service that's required. I think it's a given that you will continue to find new ways to improve service delivery, but by the same token, it's very difficult to anticipate being endlessly able to deliver service in a more efficient way and yet be constrained in your budget and have no shortfall anywhere. I'm sorry, but it's just a bit too optimistic a view, I think.

**Mr Gary Malkowski (York East):** Thank you very much for your presentation today. It was very short and sweet. I understand you have shared some of your concerns with the ministry staff concerning the cost of achieving pay equity in the public sector and the possible administrative burden which may be imposed on hospitals as proxy employers. However, I would like to point out that we are balancing our firm commitment to pay equity with the legitimate concerns of private and public sector employers during a recession. That is why we have been forced to extend the deadlines by which public sector employers must achieve pay equity and why we have proposed a proxy method of comparison which narrows the number of organizations a seeking employer can approach. I'm wondering if you would like to comment on this.

**Mr Sharman:** We have no objection to try to provide pay equity for those employees who work in institutions that don't have a male comparator. We think the approaches taken are imaginative and should achieve the intent of the act. Our concern has always been with the administration of the regulations, if you like, or the statute itself, to try to achieve the aims. We certainly have no quarrel with the aims and we support them in principle. Our concern has been how, and the administrative burden.

**Mr LeMay:** If I might add to that, as we've appreciated the changes that have been made on the administrative side with respect to proxy comparison, when you think of it from an individual employer's standpoint, typically one is loath to

share one's salary data with any other employer; it's a rare occurrence, other than on a consensual basis. Now by statute it will be required that this information be shared.

Hospitals have accepted that that is necessary and are not unduly troubled by it. They have been concerned, however, that where you require, under section 14 of the existing Pay Equity Act, that the employer and its unions each negotiate a pay equity plan, the result of that plan is then binding upon the hospital and its employees; that when you are going to be involved in a proxy comparison approach, if the hospital is the proxy comparator and if it is providing information to the seeking organization, it definitely is concerned that it does not then suffer a challenge to its pay equity plans which have been negotiated or which have been put in place under the Pay Equity Act. They don't want to be in the position where those plans can now be challenged by some other employer, some other union, some other third party not involved in the operation of that establishment. That's one of the concerns we have had and we think has been addressed.

**Mr Malkowski:** As a supplementary, I'm wondering if you could also tell me what the benefits would be to the female employees in the workplace in your organization and how you would see us reducing the administrative burden on you.

**Mr LeMay:** The concern we've had has been that you be minimally intrusive in terms of seeking information. Quite frankly, we think the amendments to the bill go a long way in that respect, because they are asking you to identify a similar job and to provide information with respect to that job and, if you do not have a similar job, to provide information on a range of similar jobs so a pay line can be done.

1120

As long as that is the extent of the requirements, the one other idea we had that we thought could be helpful would be to give the proxy employer the opportunity to seek an extension. The time limit as written in the bill now is 60 days for provision of that information. In many cases, that may be sufficient; that may also be a function of what else is going on in the institution at the time and how many requests from seeking organizations are there. That's the one area where it may be possible to improve the act from the hospitals' perspective.

**Ms Murdock:** It's interesting, because you're the first and only organization for the entire week that has liked the extension deadline, number one, which I think says something.

Another thing is that you're also the only organization—well, to go back a little bit, OAITH, which is the interval and transition housing, raised the whole concept of relying upon the integrity of a proxy plan that was of another establishment and suggested that one of the amendments be that a third party should be able to say that the plan is not up to the standard they would like or whatever, which you have said is one of your concerns. That has since been followed by a number of other organizations. I take your point, though. I know that was one of the reasons it's in as it is. We wanted to at least have the provision to look at other plans, but without having the ability to interfere with them once they've already been decided. I heard very clearly what you said and I will take that back.



I wanted, however, to go into the maintenance aspect with you, from a different perspective from what you put forward. I don't know if you were here earlier when I asked the question. In terms of the tracking for ever, I can understand the concern, but there is a concern that everybody goes out and does their job-to-job comparison, their PV or their proxy, as the case may be, for their particular organization; then 10 years, five years, whatever, down the road, we end up with a differential again between male jobs and female jobs and we're back where we were when pay equity was introduced. What I'm asking you is, how does one overcome that potential disparity?

**Mr LeMay:** If I may attempt to respond to it, pay determination always has been a complex issue, and that's really what we're speaking to here. In the hospital environment, it's a heavily unionized environment; many major unions are involved, whether you're speaking about the Ontario Nurses' Association, the Canadian Union of Public Employees, the Ontario Public Service Employees Union, the service employees in the national union. You are talking major unions.

Pay determination, until the advent of the Pay Equity Act, was largely a function of collective bargaining between the employer and one of those unions or a number of others. Where the parties were not able to reach agreement on the outcomes, you then went off to a third party known as an interest arbitrator, who then determined what your wage rates should be.

Against that backdrop, the Legislature determined that nevertheless, you have pay inequities that are systemic and that are there. Going through the process, our hope and our expectation is that you will identify those inequities and that they will be eliminated.

You are then in a position where each union understands what has happened to the relationships between jobs in their bargaining units and, in some cases, to comparators outside their bargaining units. They are then, in our view, amply able either to negotiate with their employer or, in the final analysis, to proceed to interest arbitration, where you do have a third party who can resolve the issue.

In that context, you would have to assume there's malicious intent for there to be any slippage back. Quite frankly, from the hospitals' perspective, they don't think there has been malicious intent. They certainly know that from the employers' perspective there has not been any conscious effort to build in systemic pay discrimination, and we don't think on the union side there has been any conscious effort to do that. We don't envision a world where you're going to need someone looking over your shoulder to make sure you don't slip back into some form of discrimination that was not intentional in the first place.

So with respect to the hospital environment, where you've got already a third party that assesses the appropriateness of your positions, but beyond that generally, once you've identified the problem, our hope and our expectation is that you don't need to maintain it. Otherwise—I mean, I hate to use the term, but it popped up when the act first came into

place, that people were concerned about the "pay police," and that's exactly what you're at. You then are in a scenario where you're going to have pay police and you are going to have to have them on a continuing basis. I'm not sure what the cost of your pay equity office is now, but it's certainly not going to diminish if it's going to be charged with that responsibility on a continuing basis.

**Ms Murdock:** To carry what you've just said a little further, would you say that those organizations that are unionized would have less need for a maintenance requirement? Because you don't have that same relationship in the non-organized areas.

**Mr LeMay:** You may not, but in reality the economy is not a completely managed economy. It's managed in many respects, but it is not a completely managed economy, and employers are invariably trying to address two things: They are trying to ensure that their compensation arrangements for their employees are sufficient to attract the quality they require, and they're trying to ensure that they're not paying too much. Whether they're unionized or whether they're not unionized, they're constantly attempting to test the market in terms of what's there.

So my expectation would be that over the long haul, you won't have a reversion to an old system, that once you proceed to address the problems—and I think you've got a far higher consciousness in society now than you had 10 years ago; the world is not the same as it was then.

**Mr Siegner:** If I can build on that too, it's definitely applicable in our sector. The vast majority of employees in the hospital sector are female; therefore, the vast majority of the union members are female. Having had the consciousness raised in terms of the systemic issue through this act, I think it would be difficult for a union to then revert back to intentionally systemic discrimination, because the majority of members of that union would in fact be females who have benefited directly or indirectly from the legislation. So that would be very difficult, small-p politically.

**Ms Murdock:** Right. I see that within the unionized setting. I see that there could be reversion in the non-unionized setting. It's interesting too, the consciousness aspect, because the whole discussion since 1986 has raised the consciousness of society generally, not just those organizations that have had to work their way through job-to-job comparisons. Then you get an article in the Globe and Mail today where—I think they think they were talking about pay equity, but they were talking about wage discrimination, which is different. So obviously there's still a whole educative process that is required out there.

I thank you very much. It's been really interesting, and we appreciate your time.

**The Chair:** Seeing no further questions, Mr Sharman, Mr LeMay, Mr Siegner, on behalf of this committee I'd like to thank you for coming this morning and giving us your presentation. Thank you very much.

This committee stands recessed till 1:30 this afternoon.

The committee recessed at 1130.

## AFTERNOON SITTING

The committee resumed at 1351.

**The Chair:** I'd like to call this meeting back to order. For the committee's information, we've had a cancellation this afternoon. Our 2:30 has cancelled, so we should be doing fine. We'll proceed now to a response from legislative counsel, Laura Hopkins, to Ms Poole's question from yesterday.

**Ms Laura Hopkins:** I thought instead of just jumping straight to the answer to the question I'd describe the background a bit so my answer would be intelligible. I find the act to be fairly intricate and hard to follow and I thought the answer would be pretty cryptic without setting up the background a bit.

The act as it reads now requires that certain employers determine whether pay equity exists, and if pay equity doesn't exist, it requires the employers to make payments in order to bring about pay equity. Right now under the act there's only one method that's authorized to determine whether pay equity exists, and that's the job-to-job method. If an employer has to make payments to bring about pay equity, the effective date for starting to make those payments is set out in section 13 of the act. As you know, the job-to-job method will provide for pay equity to be determined in relation to some but not necessarily all female job classes.

The bill authorizes the use of a second method to determine whether pay equity exists and of calculating the amount of any payments that might be required to bring about pay equity. This second method is the proportional value method. The proportional value method can be used to determine whether pay equity exists not only for all those job classes that are covered by job-to-job but for additional job classes that can't be covered by job-to-job for technical reasons. So it's important to remember that proportional value will address new female job classes.

Under part III.1 of the act in the bill, employers are required to use proportional value if they have any female job classes that can't be addressed using the job-to-job method. They're required to use proportional value in those circumstances, and part III.1 creates new obligations on employers in relation to those additional job classes. When it comes to those additional job classes, if employers are required to make payments, the effective date for beginning to make those payments is also set out. It's set out in section 21.10. But it's important to keep in mind that this series of effective dates only applies when it comes to obligations relating to the new job classes not previously covered.

In addition to requiring employers to use proportional value in those circumstances, the bill would also authorize employers to use proportional value in the circumstances where they could have used job-to-job. So proportional value can be used to cover the same classes that could have been addressed through job-to-job. The new part allows an employer to replace an old job-to-job plan with a new proportional value plan.

When an employer replaces the old plan with the new plan, the employer doesn't get to use the new effective date for making payments. The employer isn't forgiven from meeting the requirements under part II under the existing act.

The effective date for all those classes covered under part II remains the old effective date back in section 13.

That's the end of the background.

I understand that Ms Poole's question spoke to the situation of an employer who should have prepared a pay equity plan under part II under the current act and didn't and who should have made payments under the existing act and didn't. We lawyers sometimes refer to that kind of person as a bad actor so I'm going to talk about this person as the bad-actor employer.

The question had two parts to it and I'm going to answer the second part first because it seemed to me to be easier to approach it that way. I want to talk about the bad actor's obligations before the bill comes in force, under the existing act, and the bad actor's obligations after the bill comes into force.

After the bill comes into force, the question was, could the bad-actor employer prepare a proportional value plan and say: "This is a new plan. These are new obligations, so I get to use the new effective date under part III.1"?

The short answer to that is no. If the bad actor should have made payments according to the effective dates established under section 13, he's still bound to meet that earlier date, in relation to those classes that should've been covered and could've been covered by a job-to-job plan. So the bad-actor employer, after the bill comes into force, is still required to fulfil his or her obligations as they existed under the act before the bill came into force.

The second part of the question was, can the bad-actor employer simply prepare a proportional plan and take advantage of any lower payments to job classes that are available under the proportional value method than the bad actor would have had to make under a job-to-job plan, or does the bad-actor employer have to do a job-to-job comparison and make job-to-job adjustments for that pre-bill period and then can the bad-actor employer use the proportional value calculation for the post-bill period?

I'm afraid I'm lapsing into jargon here because I'm seeing some puzzled faces.

The bill doesn't make any special provision for transitional rules that address the situation of the bad-actor employer and that's not unusual. You don't usually address in a bill the situation of somebody who has failed to comply with the law in the past, so I'm not surprised that the new part doesn't make any special provision addressing this.

As a technical matter, the bad-actor employer is still required to meet the obligations it had to meet before the bill came into force according to the act as it reads now. As a technical matter, the bad-actor employer is still required to prepare a pay equity plan based on job-to-job and to make payments according to the timetable in the existing act.

That situation isn't changed when the bill comes into force. The bad-actor employer isn't excused from not having done what it should've done before the bill came into force.

The bill also makes sure that female job classes that were entitled to receive payments under the job-to-job method get at least that much under the proportional value method.



That's what subsection 21.2(2) does. It creates a floor that affects the bad-actor employer.

In summary, my advice to the committee is that we don't need to add a provision to the bill to ensure that the bad-actor employer understands that its obligations before the bill was passed remain. All that provision would do would be to say, "The law is as the law always has been, and we really mean it." That sums it up.

1400

**Ms Poole:** Thank you for your legal opinion; it's been very helpful to us. One question that I have relates to the fact that many presenters have come before us who have obviously interpreted it to be a problem. We had a large number of briefs that actually referred to the need for an amendment. Is there a way that we could tighten up the language somewhat in that particular section so that it is very clear? I realize you've said that technically the act ensures that the bad actor both was covered before this bill came into force and will be covered when Bill 102 comes in.

But I'm concerned that sometimes employers might not necessarily go by technicalities; they go by their own interpretation. Sometimes they might have a pay equity plan actually in place before they find out that technically they're not able to do it. Have you looked at the particular section with reference to the fact that there might be ways we could tighten up language, or do you just think that we should leave it as it is?

**Ms Hopkins:** I would be hard-pressed to find a way of reiterating the obligation in a way that makes it clearer. Since the courts generally consider that any provision in an act is there for a reason, if we were to add a provision that reiterates the obligation, there might be some confusion about the nature of the obligation itself, so we might be taking risks.

I wish I could say I could give some comfort by suggesting an additional provision to those folks who are concerned about it, but I can't. It may be that this can be reiterated by the commission in the materials that are distributed to interested employers.

**Ms Poole:** I think it's going to have to be very important that the communication strategy makes it clear that the employers are obligated to go through job-to-job, if they were originally covered by that section, prior to going through the proportional, because, as I say, it certainly was an item of confusion for many people appearing who, I would assume, had benefit of legal advice for their organizations. It's good that you've clarified that. Thank you.

**The Chair:** Thank you, Ms Hopkins.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** I'd like to call forward our first presenters for this afternoon, the Ontario Public Service Employees Union. Good afternoon. Sorry about the delay. Just a reminder that you'll be allowed up to an hour for your presentation. The committee would appreciate it if you'd keep your remarks slightly briefer than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourselves for the record and then proceed.

**Mr Frank Rooney:** My name is Frank Rooney. I'm assistant to the president at OPSEU.

**Ms Janet Wright:** I'm Janet Wright, a negotiator in collective bargaining assigned to pay equity for the province.

**The Chair:** Please proceed.

**Mr Rooney:** I'm here today to give you OPSEU's views on Bills 102 and 169. In short form, Bill 102 contains much with which we agree, so what we have to say about it is by nature of refinement. Bill 169, on the other hand, in our view, is an odious piece of legislation, and I will focus the major portion of my remarks on Bill 169. In very short form, we think that it is a very bad piece of legislation that should be withdrawn. Once I have finished, we'll be happy to answer questions. My colleague will answer questions regarding Bill 102.

I'll start with my remarks on Bill 102. A majority of OPSEU's 105,000 members are women, including workers in every sector of Ontario's public services. OPSEU has a strong history of promoting equity for our members and for our entire community. We join with many opponents of gender discrimination in welcoming the improvements found in Bill 102. As a founding member of the Equal Pay Coalition, we commend its detailed brief on Bill 102 and fully support its recommendations. We also endorse the submission of the Ontario Federation of Labour.

There are a few specifics in Bill 102 that I would like to mention. We believe small workplaces should be covered. The act needs to overcome its discriminatory omission of workplaces with fewer than 10 employees in order to formalize the right of women workers everywhere to complain about wage discrimination.

We are distressed that crown employees are losing rights under Bill 102. The bill ends rights previously held by public sector women to have the pay equity tribunal determine if the province is the pay equity employer. In conjunction with the Bill 169 amendments to the Public Service Act, we regard this as a backward step in the struggle for pay equity.

We believe that equity that has been achieved should be maintained. In the decades since legislative initiatives towards pay equity began, public intolerance for wage discrimination has increased, yet the gender wage gap has shrunk very little, from about 40% in the mid-1960s to 30% in 1991. Bill 102 will limit employers' obligations to maintain pay equity, and this will undermine the modest gains achieved by women.

Pay equity is not a luxury; it is a right. Pay equity also costs money. OPSEU believes that women who have been unable to secure male comparators have borne that cost. The recession is not a reason for delaying and for forcing them to bear that burden any further.

We welcome the proportional value comparison method for developing a pay equity plan. Far too many women have been denied their rights for lack of male comparators, but we are upset that the bill allows the province to declare that an organization does not form a part of the public sector. It repeals existing wording that permits the government to add organizations to the public service, in the schedule, and lets the province remove organizations. This is a step in the wrong direction. It will compromise women's rights to have

the provincial government recognized as their pay equity employer.

Let me now turn to Bill 169. I want to say to you that we are very distressed to be before this committee making a presentation on Bill 169, because we believe it is a totally misdirected initiative which flies in the face of everything this government has said it stands for. It is, in very short words, an appalling piece of legislation.

Bill 169 purports to regulate the routes public employees can take to achieve pay equity, but it goes far beyond protecting the government's liability as an employer for pay equity purposes, as regrettable as that alone would be. It cuts off an avenue for justice which has been taken by ambulance workers in the decision of the Ontario Public Service Labour Relations Tribunal involving OPSEU and McKechnie ambulance, and by children's aid society workers in a decision of the pay equity tribunal involving CUPE and the Kingston Children's Aid Society.

Both the labour relations tribunal and the pay equity tribunal, acting independently on the facts of the cases before them, concluded that the government of Ontario was the real employer under common law in these cases. These decisions, in the case of the Public Service Labour Relations Tribunal, have resulted in more equitable wages and working conditions for employees of that agency, McKechnie ambulance, and other ambulance services in the province.

I want to take a little time to review the McKechnie decision. The Ontario government covers the total cost of ambulance service outside of Metro Toronto, but the service is a wild patchwork; salaries and benefits for equally qualified ambulance officers who do the same work are all over the map. Ambulance services may be provided by the province, by a municipality, by a hospital, by a volunteer organization or by a so-called private operator.

Finally, in 1991, following the decision of the Public Service Labour Relations Tribunal, 32 private ambulance services were recognized as crown agencies. This allowed the union to enter into appropriate central bargaining on behalf of the employees in those services, dealing for the first time with the agent who is most directly in control of the purse-strings: the government of Ontario.

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The results of that bargaining have been very good for the province. It has brought labour peace to a sector where there was a very fractious history of labour relations dating back some 15 years and has allowed the employer, the government and the union to get on with the job of addressing issues of quality in ambulance service that are pressing for all of us and for the people of the province.

Bill 169 would undo this progressive move. It would undermine the decision of an independent tribunal. Bill 169 amends the Public Service Act so that a person is not a civil servant or a public servant or a crown employee unless expressly appointed as such by the Lieutenant Governor in Council or other officials representing the crown.

Bill 169 also makes a mockery of the government's policy to promote employment equity. The workers employment equity is designed to assist—women, visible minorities, disabled people, native people—are often the ones who work for underfunded transfer payment agencies. Bill 169 protects the government

from liability for pay equity for employees of those transfer payment agencies.

Over the years Conservative, Liberal and now New Democratic Party governments have moved to diminish the public service by various means. These efforts have been called deinstitutionalization, divestment, downsizing, diversification, contracting out, communitization and degovernmentalization. The true goal, underneath the \$25-dollar words, is to pass the job on to small, inadequately funded agencies with few resources, where employees have less bargaining power. It's cheaper that way. The savings come from the paycheques of the workers who provide the services.

The small service agencies are headed by volunteer community boards that are strapped for dollars and working in a volunteer environment, so they strenuously resist paying wages and benefits that are the standard for similar work in the public service.

What's the result for the people of the province? Services deteriorate. Services deteriorate because it is harder to attract and retain dedicated and competent staff. When better jobs come up, they grab them. In many agencies, someone with nine months on the job is the most senior employee. This harms the continuity of programs and personnel, which is particularly essential where clients may need long-term relationships in order to start changing their lives or to build better lives for themselves. It can lead to preventable tragedies.

One of our members, a woman named Krista Sepp, was murdered in her first week on the job in a home for troubled adolescents. In that home at that time, the most senior employee on the job had about eight months' seniority.

The lack of depth in an agency team means that training and staff development in those agencies go by the boards. The other side of the coin is government accountability for tax dollars. The McKechnie decision of the public service tribunal made the government accountable to taxpayers for money spent and services provided by transfer payment agencies.

This stated intention of Bill 169 is a giant step in the wrong direction. This government was elected to enhance justice and equity for working people in the province. It is a government which has taken the step of broadening access to collective bargaining for most workers through its laudable amendments to the Ontario Labour Relations Act, so why is this measure coming before the Legislature?

The stated intention of Bill 169 is bad enough; the unstated results of Bill 169 are pernicious. First, Bill 169 creates a new class of employee with no bargaining rights at all. Under Bill 169, an individual employed in the service of the crown will not be a crown employee unless expressly so appointed. With this change, many public service workers could be employed directly by the crown without any right to collective bargaining. These new unclassified employees will be caught in exactly the same legislative limbo that engulfs part-time employees in the community colleges. They are unable to organize under the Ontario Labour Relations Act because they are employees of the crown. On the other hand, they are unable to get union representation under the Crown Employees Collective Bargaining Act because they are not expressly designated as crown employees.



It is ironic that your government is committed to amending the Colleges Collective Bargaining Act in part precisely to eliminate the legislative limbo that exists for part-time college employees and, at the same time, is creating a new and equally bad bargaining limbo for its own employees.

Second, Bill 169 allows the government to create crown agencies whose employees will have no bargaining rights whatsoever. Bill 169 would cut off access to collective bargaining for employees of such crown agencies—they could be ambulance services or children's aid societies or even the new provincial gaming commission; I don't know the official name—because it puts regulatory control on the designation of crown agencies. It ensures that employees of those agencies have no right to claim that the crown is their employer, thus barring them from organizing and gaining representation rights and collective bargaining rights under the Crown Employees Collective Bargaining Act. The stroke of a legislative pen completely removes any hope of choosing a bargaining agent and entering into collective bargaining for large numbers of employees in the broader public sector.

Third, Bill 169 will allow crown agencies to decide which of their staff members, after December 18, 1991, can be union members. I know of no other labour law, certainly in this country, that allows a chief executive officer of an organization to decide who can be a union member and who cannot. Under other laws, the law defines bargaining units, the law sets out the criteria for exclusions for supervisory status, confidentiality, professional status and so on, and if there's a conflict over that, there is an independent tribunal to adjudicate. Bill 169 will let a designated crown agency hire some employees as expressly appointed crown employees with collective bargaining rights and others without the express appointment, and those others will have no rights.

It's hard to imagine a piece of labour law that gives more power to an employer to direct or influence or define a bargaining unit. Compare it, for example, to the section of the Labour Relations Act that says any union that is unduly influenced by the employer cannot even get rights as an employee organization. If you look at the heads of some of the agencies that have been designated as crown agencies already, you will know that there is no point in anybody in this committee having any illusions as to how the head of the designated crown agency will use that power and authority in relation to its employees.

Our objections to Bill 169 are profound. We most sincerely urge you to scrap it. This presentation is not a lengthy one, because we don't see any purpose in proposing alternatives or amendments to this legislation. To do so would be to express a preference for being attacked at gunpoint rather than at knifepoint, when the issue is that the attack itself on employees we represent and employees who work in the broader public sector and who may work for the provincial government directly is unacceptable. Thank you very much.

**The Chair:** Thank you. Questions and comments.

**Mr Arnott:** Thank you very much for your presentation. Particularly with respect to Bill 169, you've used very harsh language. You called the bill odious in your initial presentation. There's one part of the bill that I expect you'll find particularly odious, one that I find particularly odious. One feature of this NDP government that I find particularly

odious, and have over the last two years, is its willingness, on a selective basis, to put a sneak provision in the end of a bill which means it takes effect as of the date of first reading: retroactive legislation. Bill 4, the rent control bill; Bill 118, the amendments to the Power Corporation Act; the Sunday shopping law, which still has not come before the House for second reading, all took effect the date of first reading.

**Mr Malkowski:** On a point of order, Mr Chairman: Could we not focus on the topic here at hand? Let's not get into other things, please.

**The Chair:** Mr Malkowski, you don't have a point of order. He can use whatever line of questioning he chooses. It's his time.

**Mr Arnott:** I find it particularly offensive when we have a government that's led by a Premier who, as Leader of the Opposition, called himself a social democrat throughout his career, who constantly talked about the rights of the opposition and the important democratic elements. This bill takes effect the date of first reading, December 18, 1991. How do you feel about that?

**Mr Rooney:** I want to say that even if the bill took effect on the day it was proclaimed, we would still be opposed to the bill.

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**Mr Arnott:** When a committee is dealing with a bill we should be having an opportunity to present amendments and so forth, and we find that when a bill has taken effect upon the date of first reading, the committee proceedings are even more of a joke than they usually are in this place.

**Mr Rooney:** I wouldn't want to comment on the character of committee proceedings in this place. That's for the members of this Legislature to decide. My job here is to come and present our point of view. I take it that people came here to listen to me, that this presentation is not a joke and that people are intending to take it seriously and to discuss the issues in the presentation.

**Mr Arnott:** I'm expressing my frustration, I guess, when bills do take effect on the date of first reading.

**Mr Rooney:** We are certainly frustrated in part that this bill takes effect on the date of first reading; no question about it. But compared to the other frustrations, to use a modest term, that I have outlined, I think the camel's back was broken long ago in terms of our view on this bill. Certainly the retroactivity of it is a problem, but the other problems are as severe if not much more so.

**Mr Arnott:** I want to thank you for coming in. I've learned a great deal from your presentation.

**The Chair:** Thank you, Mr Arnott. Questions? Mr Lessard.

**Mr Wayne Lessard (Windsor-Walkerville):** I want to thank you for your presentation. You certainly left us with no misapprehension about your views with respect especially to Bill 169. As I was listening to the line of questioning from Mr Arnott, I couldn't help but wonder whether he was going to be suggesting an amendment to withdraw Bill 169. I wonder whether they might do that.

**Mr Rooney:** Sounds good to me.

**Mr Lessard:** As I indicated, I understand your feelings with respect to that, and one of your concerns is with respect to the relationship of employees who may not have the rights granted under the Ontario Labour Relations Act. I know this probably wouldn't cause you to support the bill, but what if we were to provide an amendment that would give some guarantee that persons not defined as crown employees would be deemed to be subject to the provisions of the OLRA? Do you think that would be something that would be agreeable to you?

**Mr Rooney:** I think that would go some distance to meeting one of the objections, but I want to remind you that our objection is not only to what we regard as the unstated and perhaps unintended effects of the bill but also to the stated and intended effect of the bill. In the area where it is conceivable that a crown agency could be caught in a legislative limbo, if it is not the intention of the government to catch crown agencies in a legislative limbo from a labour relations point of view, then we think you should try and be clear about where it is that you expect them to land. That is one of the objections we have to the bill. But there are several others including, as I said, an objection to the stated purpose of the bill, which we think is just wrong.

**Mr Lessard:** You would agree with me that Bill 102 at least would be extending pay equity to many women who previously weren't able to have access to it and provides a couple more methods, the proxy method and the proportional value method, in the public sector. Do you think there would be a need for crown employee determinations in the future, given the fact that those other options would be available?

**Ms Wright:** I would say that, more than likely, the largest percentage of our problems would be solved by the application of proportional value and cross-comparisons, provided of course that the suggested amendments from the Equal Pay Coalition and the Ontario Federation of Labour, which we support, would go along with it.

With the administrative horror—"horror" might be a bit harsh but that was my first reaction when I first looked at it—we would have to go through under the cross-establishment, which I know is called "proxy," but I've been thinking "cross-establishment" for so long that I will still continue to refer to it as that, if it continues that way, there is a definite need, because it leaves us again in all kinds of limbos and in employers' decisions and employers' whims or inexperience or lack of dedication to justice under pay equity.

If it doesn't get fixed, we definitely do need the crown. The tests that have been set out at the pay equity tribunal are so rigorous—and in effect, yes, we were successful in some of them. Not at CASs, because we hadn't filed on any CASs; we were in other sectors. Unfortunately we got caught in the retro, so as my colleague said, the retro does have some implications for us, but we were also in other areas unsuccessful on orders. Again, it's obviously not going to cure everything, because there are areas that will definitely still make the test on 169.

**Mr Lessard:** Can you give me some examples?

**Mr Rooney:** I'd like to just add that 169 is clearly not only concerned with pay equity and that there is—I think this was discussed yesterday with some representatives of

CUPE—a series of other issues that were raised in the McKechnie decision of the labour relations tribunal that I spoke about that 169 addresses which have nothing to do with pay equity, and those reasons are as much reasons for the withdrawal of 169 and for our opposition to its stated purpose.

**Mr Lessard:** Can you give me some examples of areas other than CAS workers where you see that need that you were referring to? One of the things we're trying to get a handle on, I guess, would be the numbers that we might be talking about, if this were a procedure that were continued to be available.

**Ms Wright:** I could not honestly give you numbers, because a lot of our cases did not continue after the introduction of 168, with the December 18 date thrown on them. Review officer meetings were held, awaiting the outcome of Kingston-Frontenac CAS. We still have outstanding orders that were held in abeyance and I don't know how they would have ruled. Possibly you should be asking review services what the ruling would have been, based on the tests. I cannot accurately give you a number.

There aren't thousands. It's not a move that is going to bankrupt the province. It's not a wholesale grab on what people have called parity. The whole intent on the tests for the province as the pay equity employer was to be able to achieve fair compensation for women who had no access to any male, and there was nothing in the current act that allowed us, and there are still, under the amendments to 102, areas that would not allow us, for complete fairness, in our opinion, the way 102 was structured.

**Mrs Caplan:** I'm really pleased to hear from you today. I'm aware that you had a meeting last spring—I'm not sure if it was with you or other representatives from OPSEU who met with my colleagues Mr Phillips and Ms Poole, at that time asking how you felt about 169. At that point in time OPSEU was not sure that it was opposed to the legislation.

In my own cynical mind, since I've been a member here in this Legislature, that kind of position has always led me to believe that perhaps some backroom deal had been cut, and you may recognize as you review Hansards that I've made some statements to that effect in the last little while. If that's not the case, I want to publicly say to you today that I was left with that impression, and I'm not surprised with your presentation today. I was surprised that we didn't hear that from you last spring.

Just as preamble, I would ask if anything had changed between last spring and this presentation and the fact that we hadn't heard from OPSEU in particular as to how it felt about Bill 169. This is really the first that we've been made aware of the strength of your feelings.

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**Mr Rooney:** I would say that our position has not changed. When the bill was introduced, we explained to our members publicly in our newsletter, which I actually believe is still mailed to all MPPs, that we were opposed to the bill, that we thought it would have a serious detrimental effect in relation to specifically the impact of the McKechnie decision of the labour relations tribunal and that it was, in terms of what we regard as the unstated and perhaps, as I say, unintended effects—it's not clear to me whether they were intended or



not. We were waiting for advice from counsel and we had some extensive discussions with our own counsel about that in order to be clear that it thought there was a serious possibility that that was going. But our position has not changed from the day the legislation was introduced.

**Mrs Caplan:** I know the meeting took place on June 10, and it's since then that I've been suspicious. I'll leave that to speak for itself.

I've said publicly—I said it during second reading and I've restated it here at this committee—that I believe Bill 169 has very little to do with pay equity and that there is another agenda that it addresses which, it has been suggested, might be better dealt with in discussions around the Crown Employees Collective Bargaining Act which I know are taking place right now.

I've also said, and I know we don't agree on all matters, that manageability of the public service is important and that some of the potential for having the size of the public service increase dramatically—you used the term that you didn't believe, as it affected pay equity, that it was thousands of people and it would not bankrupt the province.

I appreciate your pointing that out because there have been some suggestions that other decisions or the potential for who is a crown employee could lead to a doubling or a tripling or a quadrupling of the size of the civil service. That's untested and unproven, but certainly I think as taxpayers you would agree that would be a concern to all taxpayers in the province.

That's a real problem that I believe appropriately should be debated in the right context. You've mentioned the Canadian Union of Public Employees brief before this committee, and I've already mentioned to you that I'm a little suspicious and cynical by nature. On page 5 of their brief they say: "Cynically, it has to be asked whether it was hoped that any discussion of this bill"—referring to Bill 169—"would be lost, given that the focus of discussion would be on Bill 102." I'd ask you to comment as to whether you believe they're right in their cynical suspicions, as I am in mine.

**Mr Rooney:** I have nothing to say about anybody's cynicism. I myself am not a cynical person. As I explained to Mr Arnott, I take things at face value, and when somebody says something to me, I normally believe what he says until he acts otherwise.

I do, however, want to comment on the question of the potential size of the public service—

**Mrs Caplan:** Please, that was my next question.

**Mr Rooney:** —because the reality is that those hundreds of thousands of employees out there—I've seen the reports in the media too about how the public service could double or triple or quadruple in size and so on. Those hundreds of thousands of employees out there are the employees of the government. They already are in one way or another, and the government is responsible, through the short route or the long route, for the salaries they are paid, for the working conditions they work under and, often, legislatively responsible for the services they deliver. It's precisely that common law test which was applied in *McKechnie*, which was applied—a slightly different common law test but none the less a common

law test—by the pay equity tribunal. It's a fairly straightforward recognition of reality.

When the government assumes that responsibility, that is, says, "Yes, we, the government, are responsible," then that gives it, I think, a measure more control over the size of the public service, a measure more control over the size of the wage bill, because the government does not have a dozen or two dozen or an enormously large number, hundreds, of individual agents, whether they are designated crown agents or not, out there negotiating on its behalf and then turning around and coming back to the Ministry of Health or the Ministry of Community and Social Services or the Ministry of Correctional Services, the three largest transfer payment agencies, saying: "Here's the bill. Pay up." The government can give some direction to that process, and that allows for an effective management of the labour relations climate.

I think that's what's been seen in the ambulance sector in the last two years since the recognition of the ambulance services as crown agencies and the efforts made by this government—and I have to compliment this government on its efforts—and by the Ontario ambulance operators' association, as a group of crown agents, in effect, and by the three unions in the ambulance sector to try and manage that situation jointly.

It's been very effective. There has been labour peace. There has been a sense of working together towards addressing some problems that are problems with the ambulance service across the board. I think those kinds of things result directly from the government assuming its responsibility in relation to that particular sector, which came about as a result of the tribunal decision.

**Mrs Caplan:** I hope I'm not being simplistic and, as I said, we don't always agree on everything, but what I've heard you say is that you wouldn't have any difficulty if the size of the technical Ontario public service cohort doubled or trebled in size. That would not give you any concern, either as a taxpayer or as—

**Mr Rooney:** Let me say that as a taxpayer, I'm paying for those people already. I pay for them through the transfer payments this government gives. You were a minister in charge of a ministry that gave transfer payments. I know there's another person here who was a minister in charge of a ministry that had a large number of transfer payments. Those transfer payments go from this government, and from your government and from the other party's government before that, to those agencies and they come out of my pocket and your pocket and the pocket of everybody sitting in this room. What I'm saying is that I recognize that the government, as the funder, has a responsibility to me as a taxpayer to manage those payments effectively, and I think it can manage them more effectively by taking that responsibility head-on.

**Mrs Caplan:** I appreciate your point of view. I think it's fair to say that the fact that the province funds colleges, universities, municipalities, hospitals, as well as individual program areas—it's said that some 70% of the provincial budget actually funds those kinds of organizations you just referred to—would have enormous implications on the general and overall not only delivery of service but management. I guess the

point I'm making is that this is a much bigger issue than just pay equity.

**Mr Rooney:** Absolutely.

**Mrs Caplan:** You agree with that?

**Mr Rooney:** I agree that it's a bigger issue than pay equity.

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**Mrs Caplan:** And as you and I may not agree what the solution is today, we're not going to have that opportunity to debate that, because it's in Bill 169 where it says, "for the purposes of pay equity or any other purpose." That is very deceptive. It does not allow for the proper debate. If that's something the government wants to do, it should be done openly in a public forum so we can hear and discuss and consider what those implications are. I'm suggesting that the correct public forum is with the reforms of the Crown Employees Collective Bargaining Act which are under way right now. I believe it is detrimental to the public policy development and also to future labour relations in this province, not only with OPSEU but with all those who are going to be affected by this kind of legislation, to have this snuck through as an addendum to this piece of legislation.

**Mr Rooney:** I agree that the bill is not only concerned with pay equity. But the Legislature is a public forum, this committee is a public forum, and certainly, from my point of view, this committee is a perfectly appropriate place for you and me to have this discussion, and as there is a pay equity impact—I think we will both grant that—that's fine.

I would also like to say that to my recollection, the issues raised in Bill 169 are at least touched on in the employer report on the reform of CECBA. Perhaps you would want to talk to some of the members on the other side about that. But again, from OPSEU's point of view, transferring those issues into the current Ministry of Labour consultations on reform of CECBA, I suppose puts them off for a little while, but I doubt the government is going to necessarily change its view on them, certainly not from the indications we've had. Frankly, our position, in those consultations in any case, would be, "No, don't do it." That's why we're coming here to say the bill should be withdrawn.

**Mrs Caplan:** I know Ms Poole has a couple of questions.

**Ms Poole:** Thank you for your presentation today and specifically for addressing Bill 169. We haven't really had much in the way of an in-depth analysis of Bill 169, as most of the focus has been on Bill 102.

Speaking of which, I'm then going to take you to your brief on Bill 102, to page 3 of your brief under, "Don't force women to pay any longer." The government has billed 102 as a major step forward for women and beyond anything any other government has done for pay equity. The Liberal government, as you know, had announced it was going to proceed with proportional, but the current government said, "We're going beyond that, because we're going to add proxy in the broader public service," so this was going to be a major step forward with more pay equity for more women.

However, I think you've raised a very valid point on page 3 where you state, "The government is retreating from Bill 168, in which the implementation deadline for public sector

wage adjustments was January 1, 1995." In fact, it's a retreat to further back than that, because the current Pay Equity Act, 1987, provides that the deadline for public sector wage adjustments was January 1, 1995.

My question to you is, if on the one hand the government has added more women in the public service entitled to pay equity but on the other hand has taken away rights from women in the public service who, under the current act, were going to receive benefits of pay equity by January 1, 1995, isn't it a matter of robbing Peter to pay Paul? There's no doubt it's going to be a fairly costly enterprise, and in order to pay for their promise of proxy, what they've done is to draw back and pay less for the public service for the period January 1, 1995, to January 1, 1998, when pay equity was supposed to have been achieved. I'd like your comment on that.

**Ms Wright:** I think it's a little different from robbing Peter to pay Paul. Previously, in Bill 168—it's not stated here but it has been stated by our other affiliates that proportional value would have been introduced as of January 1, 1992, and would have had the same effective date as the job-to-job. So it's two-pronged.

There are fiscal realities. It's always been stated, "We can't afford pay equity," for years and years and years, "it's going to bankrupt everyone." The theme stays the same, the tune changes a little bit, the lyrics change at times, but the Pay Equity Act had stated it was there. We knew there were flaws. It was something we'd worked with for the last five years. We knew it was there, it was established, and we knew there would be a review and we could fix the things that were broken. All our people who have had job-to-job, and the majority of our members, were expecting that it would be 1995.

Given also the current trends at the bargaining table of 0%, 0% and 0%, never mind 1% and 2%, and the downsizing of the transfer payments, a lot of them have a schedule that says: "Great. I'm not getting any money that way, but at least my pay equity is going to show that I have some justice. I can't get anything in collective bargaining. We understand that. We don't like it." But now even that's gone and that's an insult. It's bad enough that a lot of their colleagues didn't get it and would have to wait until 1992 and 1993 and possibly later, with a 1995 and then totally extended on the cross-establishment—I just get frustrated—now they're losing it. It's a take-away. It's a right they had and it's been taken away.

It doesn't do any good within bargaining units that have been affected by it. Some people already got money because they were able to do pay equity under job-to-job and have received their payouts. They have colleagues in the bargaining unit who did not have a direct comparator. We split bargaining units already, and the same thing's happening when there is a suggestion that one is being robbed to pay for the other. I wouldn't want to think that was the effect. I don't know what the intent was. I have no idea. I don't dare to presume why it was extended.

**The Chair:** One more brief question, Ms Poole.

**Ms Poole:** My submission is that that's exactly what's happening, that the government, in order to give with the proxy, had to take away from the job-to-job in the public service. They couldn't afford both, and it was a way of fulfilling a political commitment they had made. I don't know



whether they honestly thought that people weren't going to notice what they were doing.

My other question for you relates to the economic analysis. So far, the government has been unable to tell us whether any economic analysis was done, either what it would cost to implement proxy in the public sector or, for that matter, what it would save by not keeping the promise of public sector wage adjustments being realized by January 1, 1995.

Did the government consult with you when it made this very major amendment to Bill 168, saying it was going to delay implementation by three years? Did they consult with you and did they give you any economic analysis, or have you done any economic analysis on what the impact of this is going to be?

**Ms Wright:** No, we weren't consulted on the extension. I couldn't give you an economic analysis because it involves the posting of pay equity plans using proportional value and cross-establishment; and to be able to do proportional value technically, as you've heard all week, there has to be access to male jobs in the establishment, which is something that's been denied to us because we had no right to go to an employer already and say we'd like to bargain pay equity using proportional value. Now, I've done it on some occasions where an employer was progressive. I sold them on it last year, saying, "Bill 168 is coming and it's going for reading, so trust me."

**Ms Poole:** It is permissive, but you need progressive employers to believe that they should go ahead and do it.

**Ms Wright:** Yes, exactly. I could not give you a costing, because, number one, I don't know what the male wages are. I have no idea what the scores would be and what a wage line would look like, or anything.

Who knows? Probably previous governments or even this one, through employer surveys, would have a much better handle on what that would be if they had the time and the resources and the ability to spend hours going through all of them. Yes, you could probably do something. It might be someone's great PhD thesis, but it's tremendous to try to figure out how you would do it.

**Ms Poole:** Let's hope it's the government's PhD thesis, because we need the information.

**The Chair:** Mr Rooney, Ms Wright, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and bringing us your presentation.

Just a reminder to the committee and the audience that our next presenters have cancelled. That's the Ontario Coalition of Visible Minority Women. But we have noted that the presenters after them will try and be here by 3 o'clock. This committee will stand recessed for 10 minutes.

The committee recessed at 1451 and resumed at 1524.

#### PAY EQUITY ADVOCACY AND LEGAL SERVICES BALANCE

**The Chair:** I call this committee back to order. Good afternoon. Our next presenters are from Pay Equity Advocacy and Legal Services. Just a reminder to the presenters that you'll be allowed up to an hour for your presentation. The committee would appreciate if you'd keep your comments to a bit less than that time to allow time for questions and comments

from each of the caucuses. Your microphones will come on automatically, so there's nothing that has to be done.

To assist the presenters, I understand we have several people there who are visually impaired, so if we could, we'll go around the room and the committee members will identify themselves. I'm Mike Cooper, the Chair of the committee.

**Mr Curling:** I'm Alvin Curling from the Liberal Party.

**Ms Poole:** I'm Diane Poole and I'm the Liberal critic for women's issues.

**Mr Arnott:** I'm Ted Arnott and I'm here representing the people of Wellington.

**Ms Murdock:** Hi. I'm Sharon Murdock, parliamentary assistant to the Minister of Labour.

**Mr Lessard:** I'm Wayne Lessard. I'm the parliamentary assistant to the Management Board of Cabinet.

**Ms Akande:** I'm Zanana Akande from the riding of St Andrew-St Patrick.

**Ms Harrington:** Hi. I'm Margaret Harrington. I represent Niagara Falls.

**Mrs Mathysen:** Good afternoon. I'm Irene Mathysen, MPP for Middlesex.

**The Chair:** Thank you very much.

**Ms Murdock:** And there is one other member who will be presently coming who will be sitting at the end, Gary Malkowski.

**The Chair:** Now I've lost my train of thought. Oh, yes. For the record, could you please identify yourselves and then proceed.

**Ms Senka Dukovich:** Thank you very much. We're pleased to be here to present our views to your committee. As you've indicated, this is the Pay Equity Advocacy and Legal Services, known as PEALS, but we are here as well with one of our client groups, so I'll proceed to introduce myself and the rest of our clinic.

My name is Senka Dukovich and I'm the executive director of this clinic. Katerina Makovec is our community organizer. Minh Pham is staff lawyer with the clinic. We also have members from Balance. Balance is a support service for blind adults. Balance teaches these adults skills and helps to integrate them into the community. They are Tricia Morley, Jo Sereda, Sheryl Livingstone and Janet Gardiner.

We propose first to tell you about our clinic and we hope not only to leave time for questions but to have a few minutes so you may hear directly from one of our client groups. We have given you a little brochure which we have available for people who don't know about us.

Pay Equity Advocacy and Legal Services is a non-profit legal clinic with a special focus on women and pay equity issues. We are part of the Ontario system of community legal clinics, which are ultimately supervised by the Law Society of Upper Canada, the Ontario legal aid plan, through the clinic funding committee. This is to ensure quality of services for all clients.

The system is comprised of general and specialty clinics. PEALS is one of the specialty clinics. You may have heard of others, such as ARCH, the Advocacy Resource Centre for the Handicapped, Metro Toronto Chinese and Southeast Asian Legal Clinic, Toronto Workers' Health and Safety Legal

Clinic or the Aboriginal Legal Services of Toronto. These are some other examples of the specialty clinics. I believe in Ontario we have about 71 general community legal clinics and specialty clinics.

As such, we are an independent community organization with a volunteer board of directors drawn from women's groups and members of the public. This board oversees our day-to-day operation, and we are the only clinic in Ontario that specializes in pay equity. Therefore, we purport to serve the entire province, and we do in fact have cases in places I hadn't heard of until I joined the clinic. The staff at PEALS includes two lawyers, a community organizer and support staff.

PEALS was established in December 1991, so we're just doing our statistics in the coming month in response to a lobby of women's groups and anti-poverty organizations. Women in lower-paid occupations and women facing racial, cultural or language barriers are usually the most likely to benefit from pay equity. These are women who do not usually belong to a union and cannot afford legal advice.

As we know, the system for non-union women is a complaint-based system under our act. It has been recognized that the cost of bringing a complaint through the legal process of the Pay Equity Act is prohibitive for those women who do not have the resources of a union to represent them. It is also very time-consuming to gain a full understanding and have some expertise which is necessary to go through the complaint process, and we provide women with legal representation, advice and information as well as referrals to other agencies or other clinics if that's appropriate.

We are in contact with women whose employers may be at any stage of the pay equity process. Our involvement can be providing women with advice on how to write job descriptions and not to overlook features of women's work, it can be providing them with summary advice, or of course representing and guiding them through the complaint process, both at the review services stage and acting as counsel before the Pay Equity Hearings Tribunal.

1530

We also provide public education. We speak to groups of women in English as a second language classes and in programs preparing them for entering the labour force, to community college students and to law students. Further, we speak to women working with other women. We go to conferences of umbrella organizations such as OCASI, which is the Ontario Council of Agencies Serving Immigrants, or NAC, the National Action Committee on the Status of Women, which includes many women's organizations, to talk about pay equity and our experiences. Now I'd like to ask for the participation of other members of the clinic, and I'll turn to Katerina Makovec to continue.

**Ms Katerina Makovec:** I would like to speak a little bit more about our perspective. The primary mandate of our clinic is to help and represent women who do not have a union. We are in daily contact with women who do not have anybody but themselves to represent them in front of company directors or company lawyers. Our clients come from typical female jobs. They are clerks, health care workers such as registered nursing assistants, rehabilitation workers,

nurses, secretaries, child care teachers, social service workers and others.

Some characteristics of the clients and women we reach out to are as follows: difficulties in understanding what pay equity is; difficulties in assessing their rights under pay equity; having English as a second language; multiple discrimination in the workplace, not only pay equity, but for example, also racial discrimination; real fear of being dismissed or penalized if they assert their rights under pay equity. Some of the clients we represent have already been dismissed.

Non-union women in the workplace represent the vast majority, almost 80%, of all working women. Women in unions have lower salaries than men in unions and this wage gap is even larger for non-union women. In 1986 the average salary for a full-time working woman in Ontario was almost \$21,000, and in 1991 it was almost \$27,000. On the other hand, the average salary for a man working full-time was \$32,000 in 1986 and \$38,500 in 1991.

Low earnings of women mean that those of us who are single parents are most likely to be poor; 80% of women who are single parents earn under \$30,000 each year. In 1989 in Canada the average total income, including earnings, government and support payments for female lone parents, was \$28,560. For male single parents, the average income was almost \$10,000 higher. We have all these statistics from the Ontario women's directorate.

This leads us to the conclusion that women are the working poor. Therefore, legislation such as pay equity is vitally important to bring women just and fair wages and reduce poverty among women and children. Increased wages of women will in turn be an investment in the economy. Women are consumers and spend money on goods and services.

We are proud to live in Ontario, which has the most progressive pay equity legislation in the world, and we salute the government for its dedication and work towards improving and extending the pay equity legislation. However, we see some areas in the new Bill 102 that need improvement; some areas need to be deleted, some need to be changed and some need to be strengthened.

One of the areas we would like to talk about is the language and terminology, because from our experience in dealing with non-unionized and lower-income women, we know that the pay equity language needs to be non-legalistic, correct and sensitive to women and equality issues.

Some of the terminology from Bill 102 will be used in materials intended for the broader public. Therefore, we would like to see some of it changed. For example, we would like to bring forward the term "cross-establishment" for "proxy," just as the term "equity" is not generally understandable among many women we reach. For example, if I make a contact with a community agency, the workers would ask me, "How do you spell 'equity'?" They don't know the concept and they don't know the word either. The term "proxy" may turn out to be a similarly unfortunate choice. We would like to see the term "benchmark female jobs" used instead of "key female jobs." The word "key" may imply that the key jobs are already more valuable and therefore seat a bias into the process right from the beginning. Also, we would like to see the term "all-female organization" exchanged for "seeking



employer," for similar reasons, the negative connotation of "seeking."

The other area we are quite concerned about is that the act does not cover workplaces that have under 10 employees. We are disappointed that the proposed bill does not extend pay equity to all women. In today's restructuring economy there are many women working in small workplaces in the private sector that have less than 10 employees. As I said, the current act exempts these smaller employers from pay equity responsibilities, and there are no provisions or indications to include them in Bill 102. It is not fair to deny rights to women who happen to be hired by a small company or organization. Why should we create wage gaps among women themselves and polarize further the labour force in terms of income? It is enough struggle to work for closing the wage gap between male and female jobs, and we do not want to be closing wage gaps only for some women and widen another among other women.

There was one very positive section which we were very glad to see in Bill 102, and that's the section about posting a notice. We think it's very good and we would also like included on the notice the telephone number of the Pay Equity Commission's hotline.

Our concerns are also centred about the fact that Bill 102 weakens some of the existing rights set in the 1987 Pay Equity Act. We believe this is an error the government can easily remedy. We will highlight some of the areas we are concerned about.

The current act requires the public sector to achieve pay equity for women in 1995. It is not fair to extend the time limit until 1998. It is a step backwards and shows a precedent that it is perhaps not wrong to take away from women. It illustrates once more that even at the end of the 20th century, when the government needs to deal with the economic situation, women are those who are manipulated and considered an easy target, supposed to carry the burden of the recession.

Bill 102 includes a new section on maintenance. We would like to see this section deleted because it weakens the current act. It authorizes the government to set limitations on maintenance of pay equity by regulation. What is required to maintain pay equity should be determined only when conflict arises and only by the commission and the tribunal on a case-by-case basis.

Currently, the act allows to determine the government as an employer for pay equity purposes. This enables a greater number of female jobs to find an appropriate male comparator, as there is wider choice. If it is legislated, as Bill 102 proposes, that the crown cannot be determined as the employer, then the potential for pay equity rights of many women will be circumscribed already, before they start. These women not only have had to wait longer to start and achieve pay equity, but they also would be limited as to the choice of the male comparator.

Now I would like to ask our lawyer, Minh Pham, to present some comments on other areas.

1540

**Ms Minh Pham:** At this point, we would like to offer our support to some of the submissions from other organizations you have heard from already. Submissions have been

made to you by the Equal Pay Coalition and also the pay equity office. They concern the enforcement of review services orders by the pay equity office.

We support the changes proposed by the pay equity office to add clause (d) to subsection 32(1) of the current act. This addition of clause (d) would allow the pay equity office, where it has requested a hearing before the tribunal under section 34, to be a party to the proceedings before the tribunal.

Again, as our clients are non-union women and have few resources, they are clearly in a disadvantaged position compared to their employers, who can easily afford lawyers when it comes to trying to have a review officer's order enforced. We, as a clinic, try to participate with the pay equity office in trying to resolve pay equity complaints at review services etc. The pay equity office, after thoroughly investigating the complaint and writing the order, if we find that the order cannot be enforced unless there's a complainant who then has to take up the courage to bring the complaint to the pay equity tribunal, then many of the rights that have been afforded these women under the Pay Equity Act are lost.

Then the women feel reprisals from the employers, so they would be very reluctant to complain in their own right, and as their lawyers, even though we do try to help as many women as possible, the real fear of dismissal is a deterrent to them asserting their rights.

Besides adding the pay equity office, we would recommend that the bill not be amended to include any other persons entitled by law to be parties. We believe it is appropriate for the act to specifically list the parties to a hearing, as it presently does. That means the employer, the objector, a complainant, the bargaining agent and the pay equity office. We feel that if we are to extend entitlement to standing, as the bill does, to allow other groups and organizations that think they have some interest, however remote, in the outcome of the hearing to become parties, this would make it even more difficult for non-union, unrepresented women to come to the tribunal to try to enforce their rights.

There have been a few attempts on the employers' part to have other smaller units or other groups than themselves try to come to the pay equity tribunal to claim that they are in fact the employers of the women.

Another proposal: We also propose that section 34 be amended so that settlements cannot contravene the act. We propose that section 34 be amended with the following subsections:

"(5) An order of a review officer is not revoked except by a decision of the tribunal or an agreement by the parties relating to the order.

"(6) No employer, employee or groups of employees or bargaining agent may waive any rights or disregard any obligations under this act.

"(7) The pay equity office can request a hearing before the hearings tribunal with respect to a contravention of subsection 34(6)."

The intention of subsection (5) is to allow parties to settle issues which have been the subject of a review officer's order and subsequently an application before the tribunal. We very much encourage settlement efforts of parties to applications before the tribunal, provided that the settlements do

not contravene the act, so as to ensure that the rights of women workers are not thereby sacrificed.

We work with non-union women and one of the great fears they face is retaliatory action by the employer. This is supposedly dealt with under section 9 of the act, as it is at present, but as Katerina has mentioned, we do represent women who have been ostracized, harassed, threatened and even fired. The fear they have of some form of retaliation by employers for pursuing their pay equity rights is very real and justified.

Unfortunately, we cannot give them the assurances they deserve and need that the act gives them meaningful protection against retaliation if they formally complain. This is because section 9, as it has been interpreted by the Pay Equity Hearings Tribunal, imposes an unreasonable legal onus on employees. It is essential that section 9 be strengthened so that the legal onus is not put on the employee, as it is now, to prove that the employer's actions were motivated by the pay equity complaint initiated by the employee.

We propose that there be a provision included in Bill 102 similar to a provision that exists right now in the Ontario Labour Relations Act, which provides under enforcement subsection 89(5) that where the employee has suffered some form of punishment or retaliation, the "burden of proof that any employer or employers' organization did not act contrary to this act lies upon the employer or employers' organization."

We submit that it is necessary to add such a provision to the Pay Equity Act which will correct the employment relationship where there is an inherent imbalance of power. In the case of non-union women and most vulnerable employee groups, such an amendment is definitely needed and ought not to await full review of the Pay Equity Act in 1995.

**Ms Makovec:** There are still other concerns that we choose to comment on today. Bill 102 includes some sections that are not necessary and some sections that need clarification. As you probably notice, we do not attempt to provide you with an exhaustive list of our concerns and only highlight the most pressing ones. As we mentioned previously, the brief submitted by the Equal Pay Coalition, which we endorse, is quite exhaustive and sufficient. Our highlights are about the other changes we would like to see.

Bill 102 allows us to amend the appendix to the schedule. There is a provision under the current act that the appendix can be expanded, and therefore we do not need a section that would allow removing an entitlement for pay equity. We would like to see this section removed.

1550

The penalties for contravention of subsection 21.17(7) seem too severe. These are penalties for revealing information that was obtained from another public sector agency. We think this is information on public sector jobs, so most of this information is public knowledge already and we would like to see this section removed.

The section on changed circumstances is not providing the same protection to non-unionized workers. This oversight should be corrected.

The government has committed itself to start with paying the pay equity adjustments in the cross-establishment as of January 1993. Now Bill 102 proposes to postpone the date for

one more year. This means that the government expects women in the lowest-income categories to wait and carry the burden of the recession. For them the recession has been taking place all their lives. There are surely other sectors more easily equipped to carry the burden of the current economic restraints. Later in our presentation, you will hear from one of the transfer payment agencies that is affected by the delay.

I would like to comment shortly on the methodology in the cross-establishment. We do not like the idea of comparing women to women to men. The principle and the idea is that female jobs are compared to male jobs and therefore we would like to see a methodology developed that would compare them directly. But we know in practical terms this methodology proposed in the bill may be more workable than the ideal that we would like to see.

We would like just to refer again to the brief of the Equal Pay Coalition and support its arguments.

I would like to ask our executive director now to say some concluding words.

**Ms Dukovich:** We of course are very pleased to see the expansion of the Pay Equity Act to cover more women employees. We have expressed some of our concerns with the bill and we trust they are going to be heard and there will be corrections made.

We have to some degree limited our comments regarding the current act. We know that the act is scheduled for review soon. Therefore, we would like to urge the government to start with reviewing the act now so that the review will be finished by 1995.

I don't have an idea of how much time we have. I'll leave it the Chair, but I wonder if we have—

**The Chair:** You still have about a half-hour left.

**Ms Makovec:** Yes, we have more than half an hour. We are doing very well.

**Ms Dukovich:** Oh, good. I don't have a watch.

I would like now to ask the other people here, who are the people from Balance, to add their experience and comments.

**Ms Tricia Morley:** My name is Tricia Morley. I work for a small non-profit organization. In the first go-around with pay equity, we were only nine female employees who didn't fit in, so nothing really needed to be done about it. In following up, in reading newspapers and trying to find out how we fit into the spirit of pay equity, we realized that we were a transfer payment agency, but that again was hard to get clarified when we went to the pay equity board. Are we public? Are we private? A lot of this sort of stuff is confusing.

In 1991, as a representative of the Balance staff, I went to the pay equity consultants and asked them if they would apply in the spring of 1991 to have us considered a transfer payment agency or find out if we were so we can compare ourselves to government workers. I personally have worked for the government and as a rehab counsellor I was paid \$10,000 more than I am paid now as a rehab teacher. I know the difference in working for the government and working as the poorer cousin in a transfer payment agency.

We are a small organization and the first thing the staff say to me when I suggest we go and speak to pay equity and find out what we can do and find out if we can somehow



increase our wages is that they're concerned their funding will be cut, there will be retribution, they won't have any jobs at all because there's a recession and everybody's cutting back. There is a lot of realistic fear there.

So the under-10 issue—we lost out. Traditionally, we have teachers who are blind people themselves who actually taught other blind people in the history of rehabilitation, and the other factor is they're either visually impaired or they're women. So the whole occupation has been traditionally systemically women's and poorly paid. A lot of charitable organizations started out as charity and good volunteer works, but a lot of women today are sole supporters and it's important that our wages reflect the work we do in the community.

The other issue was that when I did go and ask if you compare it to a transfer payment agency—I don't know, it took a while. When they finally got back to us, they said the legislation was changing and they'd closed that door. You could no longer request to be compared to the government. They said it was being discussed in the House and they would hopefully pass that in the spring of 1992. This is now January 1993 and what I hear today is that it's again being changed and then again being delayed. We have one lady on staff who will retire next year, so by the time it does get around to happening it won't be of any benefit to her.

I could give more information on the background of the agency, if people have interest, but I won't take up your time. I realize this has been a long four days for you and it's the end of the period.

There was some question originally whether we were public or private and that would keep bouncing back and forth. At the moment, they've said our only hope is possibly with some sort of a proxy comparator outside. So we're sort of left in limbo at this point. Depending on your input, I'm sure, and how this legislation actually pans out, we'll again try to see how we apply. Thank you for your time.

Interjection.

**Ms Morley:** I also have a part-time job teaching at a college in Brantford. I commute once a week to Brantford because I have two children and I'm the only income parent in the family. I enjoy my work very much and I love where I work, so I really am reluctant to leave it, but because of financial reasons I'm having to look at other things. It takes away from the value of the quality of the time with my family and increases my working hours and what not and stress in life, but that's all personal. You do what you have to do to keep things going.

I've asked two participants of the program that we actually offer—a visually impaired adult in the past didn't have much support when it came to moving out and living in the community independently. They could take training programs, but when you actually moved into the community, there's a lot to learn to be totally independent. Traditionally, people lived at home with their parents and when the parents are aging, it was a sibling or family member, or eventually maybe a nursing home, as with many situations.

I originally worked with the CNIB, but people who work there felt there was a need to create a new service to help people to break away from being dependent on institutions, being dependent on family, and the Balance organization was

started. What we do is, if adults over the age of 18 want to live independently and apply to our program, we assist them with housing. We give them the rehabilitation training and home management, mobility training, to learn how to get around the community; community access integration so they can get connected to the community and learn how to do things independently. That's the focus of what we do.

I've asked a couple of participants and suggested, if the spirit moves them, because they're a little bit nervous about speaking here, if they would like to say something about what the service has meant to them in their lives, if that would be of interest to your honours.

**Mrs Caplan:** Mr Chairman, I know how intimidating appearing before committees like this can be. I've been in this Legislature now since 1985 and have participated on a lot of committees, and I want to tell the people who are here today that no one has ever been bitten and no one I know ever left this place feeling worse than when he came in. Most of the committee members I've served with are friendly. You can agree on whether you like us or not. We sometimes don't like each other.

But I would welcome, and think that it would be very helpful and useful for all the members of the committee to hear directly from people who are potentially affected by this legislation. So I would encourage your delegation to speak to us, and there's nothing whatever to be nervous about.

**The Chair:** Thank you for those words of encouragement, Mrs Caplan.

1600

**Ms Janet Gardiner:** Thank you very much. My name is Janet Gardiner. As a fairly new participant to the program, I'd like to say a few words about how it's affecting me and giving me the confidence to feel part of the community and part of the city of Toronto.

I've just recently moved here and one of the preconditions of being involved with Balance is that you must be a resident of Metropolitan Toronto. Now, for those people who are living outside Toronto, it means in the first place moving from your home town, wherever that may be, and finding accommodation immediately, which Balance assists in very well, I might add. In my case particularly, it took much less time than either of us, the staff or myself, figured it would. The whole process went very well.

I've been involved now for almost four months, learning, as Tricia said, about home management and taking care of an apartment. This is my very first experience with doing that on my own. I have, in the past, lived with family friends and a common-law spouse for a while, and to have the experience of managing and taking care of one's own place and all the expectations, excitements and fears and all the things that are involved with it are challenging but also very exciting.

I see Balance as a very unique kind of program in that unlike other rehabilitation agencies, it's very individualistic. It prides itself in modelling the program to the participant and the participant's individual circumstances and needs. It's been, like I say, very effective in terms of beginning to build my own confidence and my own sense of myself.

Living with family, you often get dictated to or disempowered, I guess is the word that's being used these days.

Being involved in an agency that is objective and doesn't have any personal or emotional stakes in your success or things like that makes it much easier for me to work with someone who isn't personally involved with me.

I just want to say also that the concerns the committee has addressed involving this issue of pay equity could certainly affect us as participants along the line. If staffing is reduced or cut, or staff feel the need to take other employment because of pressures like this, I think that would be a real loss to all of us. I ask you to consider that when you study this and make your recommendations.

**Mrs Caplan:** You don't have to worry about the microphone. Just sit back and relax. As long as you're sitting down, it won't be a problem.

**Ms Jo Sereda:** My name is Jo Sereda. I'd like to say something that Balance has done for me that I don't think I would have got through another organization. Other than learning how to take care of my place, I also got some help looking for some volunteer work which I'm finding very fulfilling. I do some work for West Park Hospital.

**Interjection:** That's okay; just relax.

**Ms Sereda:** They also started a—how do I get out of here?

**Interjection:** Okay, just relax. Just relax.

**Ms Sereda:** Tell them for me, please.

**Interjection:** I don't think she's going to continue. She's going to—

**Ms Sereda:** I will, but I can't.

**Interjection:** Not yet?

**Mrs Caplan:** Take a few minutes and relax. Everybody's a little nervous in this place. There's no reason to be concerned about it at all. Everybody's friendly except the Chairman.

**The Chair:** I'm just cuddly.

**Mrs Caplan:** That's right. He says he's just cuddly.

**Mrs Irene Mathysen (Middlesex):** Mr Chairman, could I ask her a question?

**The Chair:** Would you go with a question?

**Ms Sereda:** Yes.

**Mrs Mathysen:** Jo, my name's Irene. I was listening to Janet and one of the things I was wondering about was how your lives have changed, because it occurred to me that if you were living at home for a long time, you were a child. Now you're an independent adult. I just wondered what that has meant to you. Has it made your life different?

**Ms Sereda:** Well, I was just coming to that. One thing I wouldn't have found out about if I had been living at home with my parents is pet therapy, pet visitation places. I have found another place to take my cat to play with other people in nursing homes. I also know how to take care of it. If you can't look at how other people are taking care of pets, you sort of need a little help in learning how to do it and finding some ways of getting around.

**Mrs Mathysen:** Did you find that taking the pet to the nursing homes was good for the people in the nursing homes?

**Ms Sereda:** Yes, I have found that. It also feels good. I also feel good because I know I'm giving something to the community and not just sitting there warming the couch.

**Mrs Caplan:** How long have you been in the volunteer program now?

**Ms Sereda:** One job I do isn't pet therapy. I started working at West Park Hospital about, I think, three years ago, in its occupational therapy department. I just started with another nursing home a few months ago, I think last fall.

**Mrs Caplan:** From your experience, do you think that the pet therapy in those environments is more successful than some of the other occupational therapy programs that you saw over the three years?

**Ms Sereda:** No, not particularly; they're both important.

**Mrs Caplan:** They're both important.

**Ms Sereda:** One gives you work—the point that I think I'm trying to make is that some other organization might have just left me to fiddle around and find something else to do in the community. I might still be at home trying to figure out what to do.

**The Chair:** If I may offer a suggestion now, maybe we could go to the questioning from the committee members. Each caucus has about five minutes for questioning.

**Mr Malkowski:** I'm speaking through an interpreter. My name is Gary Malkowski and I'm using my staff interpreter, so that's whose voice you're hearing. I'm deaf.

I wanted to talk a little bit about pay equity legislation and the impact that will have on your agency and talk about the foundations of pay equity and your budget. Once legislation is passed, do you feel it will affect your staffing of your agency, and if it will, what kind of concerns would that look like for you?

1610

**Ms Morley:** I'm not so concerned personally about the staffing and the budget. I know what I'm doing is a very valuable service, and I have confidence in it. I have a colleague who happens to be visually impaired and that was her comment. I think that has some reflection on where women and disabled people come from, that fear is their first reaction to any change, and fear is their first reaction when anybody asks them to speak out in what may not necessarily be a friendly manner and may be contrary to the powers that be.

I invited her to come today. She's very busy and I think it was just too much to take on. This all happened kind of fast. I didn't have time to really work on this and bring people around to understanding how important it is for people to speak and come and talk. Everybody's nervous; I'm nervous. But as a group, maybe it's got something to do with being women. We're not used to standing up and saying what we want and expecting people to listen to us and not be punitive.

**Mr Malkowski:** May I ask a supplementary question? I think it's an important point and concern that you raised. From your own experience as an agency or with others, could you talk about the groups of women? When you compare it with other disabled women, do you believe that disabled people make less than the others in terms of the women's community?



**Ms Morley:** Do you mean disabled compared to women?

**Mr Malkowski:** Yes.

**Ms Morley:** In our organization, it depended on when you started with the organization and at what level you came in, but because of the recession, because we have no control over the funds and because we're not allowed to do fund-raising for wages, we have no control over wages. So we're at the mercy of whatever the executive director negotiates with the government. I'm not really sure about the other staff members. I don't think they're paid differently according to their disability. If they were, everybody else on staff would get really ticked off. We try to advocate in what we do.

**Mr Malkowski:** Thank you very much. That's helpful information.

**Ms Murdock:** I appreciate the comments, particularly from the client group, but I'd like to ask some questions of PEALS because you were mentioned this week, and it was quite evident that not very many people know about you, and that's unfortunate. So the communications plan in that regard is going to have to change.

I notice on your brochure that it says "Wage Justice for Women" across the top and the bottom; a good point to make. I wanted to know, under the present act on job-to-job, do most of your queries come from groups that are having difficulties with job-to-job or are they information queries in terms of trying to find out how they do job-to-job? I presume you haven't started PV or proxy.

**Ms Dukovich:** Pardon?

**Ms Murdock:** You haven't started PV or proxy yet?

**Ms Dukovich:** No, we haven't. I guess you're asking what kinds and generally for an overview.

**Ms Murdock:** Yes. What is predominantly the kind of queries that you get, and are they all based in Metro?

**Ms Dukovich:** No.

**Ms Murdock:** I know that you cover all of Ontario.

**Ms Dukovich:** No, not at all. First of all, I would say most of our clients are from outside of Metropolitan Toronto. I'll give you some names: Wingham, Valley East, Belmont, Methuen. I have various quarterly reports in terms of our statistics: Windsor, Welland, Niagara.

**Ms Murdock:** Are they the same kinds of requests?

**Ms Dukovich:** No, they are various types of issues; for example, a concern about the retaliatory action, which would be a section 9 concern, that we referred to. Questions about cases on who is really the employer, the gender neutrality of the plan: "We have a pay equity plan but it didn't give us enough money," or "It gave us no increase. Is it right?" Other issues might be gender dominance—the employer decides that the job is not a female job class—those kinds of issues, so everything from job evaluation to who's the employer to how the plan was done. "There was no plan at all." We get those complaints, no posting at all, and investigation into that.

**Ms Murdock:** On the changed circumstances, I just wanted you to know that there was an oversight regarding section 14, you're right, so it will be corrected.

**The Chair:** Ms Poole.

**Ms Poole:** First of all, welcome to the committee. We're glad you came today, and I guess a particular welcome to PEALS, because you're actually in my riding at 40 Eglinton East.

**Ms Dukovich:** Yes.

**Ms Poole:** Does Balance share the same address?

**Ms Morley:** No, we're in Etobicoke, around Dundas and Islington.

**Ms Poole:** Welcome to you anyway, even though you're not from the Eglinton area. By the way, I'm Dianne. I introduced myself a bit earlier.

One of the things I've found is that there have been a lot of groups that have come to us and said that they're not really happy with the complexity of the legislation, particularly some of the wording that's used, and they find it confusing. Quite frankly, I identify with those comments because I find it very confusing language. But I was just wondering—and perhaps I could ask some of the folks from Balance to answer this. I think it was Sheryl who didn't have a chance to speak yet. Maybe we'll ask her to answer this one.

I'm not sure that using terms like "cross-establishment," "employer" and "benchmark" are all that much of an improvement. I find them personally still very confusing and I just wondered, from your perspective, do these terms have a whole lot of meaning for you? Do you think it makes everything as clear as crystal?

**Ms Sheryl Livingstone:** No.

**Ms Poole:** Okay, I'm glad I'm not alone.

To the folks from PEALS, you're probably about the 15th group that has suggested this particular terminology, so I know you've been talking among one another, and many of you are members of the same organizations, but have you talked about any other possibilities? I'm not quite satisfied that this terminology is a whole lot better than what went before it. It might be for the consultants and for the people who are really well versed in pay equity, but for most of us I'm not sure it's much of an improvement.

**Ms Dukovich:** I guess the legal community and process and drafting still need to go some way to become less technical. Our suggestions are at least, if you will, in the lingo of the day, more politically correct, we would say. But we do think there could be more improvement in all legislation, including this type of legislation, in terms of readability or accessibility to the non-legal community. I think that's what you're asking about. Does anybody want to add anything?

However, we do think the language we're suggesting takes into account, is more sensitive to, if you will, equality issues and this area, and is a little bit clearer. But I guess when you're talking about job evaluation—

**Ms Poole:** You mean this is as clear as it gets?

**Ms Dukovich:** As we've said, it takes a long time and it is a complex area. When we get in front of the Pay Equity Hearings Tribunal—we have a case, for example, that we've just concluded that has had, I would say, between 40 and 50 days of hearings, so they're very lengthy processes, if you get to that point, and there's much expert evidence in these cases. That's another issue in terms of, why the costly legal process?

This whole area is full of consultants and experts, so in some respects it is inherently a technical area.

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**Ms Poole:** I'd just like to thank again the women from Balance for coming and sharing your stories with us and also for agreeing with me that you don't understand the terminology either, which makes me feel much better, and also the women from PEALS, not only for coming and sharing your stories and giving us some new information, for instance, regarding the tribunals and retaliatory measures and things like that, but also because you're doing very good work. You were commended quite nicely, I think, by the Pay Equity Commission when it was here. I know you work very closely with them. Keep up the good work. We're glad you're there.

**The Chair:** Mrs Caplan, you have about a minute left.

**Mrs Caplan:** I'll try to be brief. There are a couple of questions. This package of legislation has been described by a number of presenters as being regressive and a step backward in a couple of areas. I'd like to explore one with Balance, because I think it might help us to see how this would affect you as an organization. You have how many employees?

**Ms Morley:** Nine.

**Mrs Caplan:** What is your overall total annual budget, approximately?

**Ms Morley:** I'm not really sure.

**Mrs Caplan:** Could we say that your budget is \$500,000?

**Ms Morley:** Less than that.

**Mrs Caplan:** Less than \$500,000. Under this legislation, because it removes the deadline for implementation, pay equity would be—

Interjection.

**Mrs Caplan:** Well, they've said that's what they would require. The interjection was from the parliamentary assistant. What you've said is that there's not a job-to-job comparator. I just want to make sure we're clear. There's no job-to-job comparator, so for your organization the deadline obligation has been removed entirely and the only obligation for achievement of pay equity for your group would be 1% of payroll for as long as it would take. I notice some heads from PEALS nodding. All right. If your budget is less than \$500,000, the obligation for a pay equity implementation on an annual basis would be \$500 or less. Is that correct, from PEALS?

**Ms Pham:** One per cent.

**Mrs Caplan:** One per cent would be less than \$500 a year, correct?

**Ms Makovec:** No, I think \$5,000.

**Mrs Caplan:** It would be \$5,000 a year for the entire organization. I just want to take a look at this. From your experience, PEALS, given an organization like this with nine people and with that size of budget, do you have any experience as to how long it might take for this group to be able to implement and achieve pay equity, given a plan that would be developed for it?

**Ms Morley:** It doesn't sound too promising.

**Ms Pham:** It's important in this case that the agencies would be classified with the employer, that is, a public sector

employer, because right now, under the act, that's how they would have been perceived, because they are under 10. But if ever it comes, then we're looking for—I have seen statistics that say about \$350,000 is the average budget and so we are looking at about \$350 per person for 10 employees. We have had some success in cases where our women employees have had settlements of about \$12,000; adjustments over the one year are sometimes \$5,000. If we're looking at something like \$350 per year maximum, then it could mean 10 years.

**Mrs Caplan:** It might take 10 years for a group like this to have its plan implemented because of the removal of the deadline and the obligation for 1% of payroll per year?

**Ms Pham:** Yes. That means that the gap really never gets close because, as I say, the difference, the wage gap is somewhere between a few thousand dollars. We have seen that. Our average success has been around \$2,000.

**Mrs Caplan:** I think that—

**The Chair:** Thank you, Mrs Caplan.

**Mrs Caplan:** I just want to pointed out that this is an example of why this legislation, as proposed, is a giant step backwards, as seen by many of the delegations.

**Mr Tilson:** I would like to thank the committee for coming and giving its presentation. I have no questions.

**The Chair:** On behalf of this committee, I would like to thank the Pay Equity Advocacy and Legal Services and Balance. One final comment?

**Ms Dukovich:** I wonder if we could just respond to Mr Malkowski's question. I know he did address Balance about it but it's an important question: the issue of people with disabilities, the extent of their participation in the labour force and what the wage gap was there. We are very concerned about that.

I think we're all aware from what we understand in the statistics, there's a very low rate of participation, first of all, in the labour force, by women with disabilities, and even for those in the labour force, I think we are concerned that the earnings are very low. But the problems we are talking about, women coming forward with complaints, are again doubly compounded with those who suffer other types of discrimination, so I think it's very hard for those people to come forward.

We would be very interested, as is the Advocacy Resource Centre for the Handicapped, interested in discrimination wages against those people with disabilities. I think that's an area we might well be involved with in ARCH, in terms of its access to those people and us as a pay equity clinic being able to assist them. I think we will have to do the outreach, because again it's very difficult, for a whole host of reasons, for those people to come to us.

**The Chair:** Thank you for that piece of information. Once again, I want to thank you for coming out and giving us your presentation this afternoon.

**Ms Dukovich:** Thank you very much.

**Ms Poole:** You see, nobody bit you and nobody attacked you. We're all relatively friendly. I guess we're in a good mood today.



CANADIAN UNION OF PUBLIC EMPLOYEES,  
LOCAL 1528

**The Chair:** I'd like to call forward our next presenters, the Canadian Union of Public Employees, Local 1528. For the information of the committee, there will be no written brief on this presentation.

Good afternoon. Just a reminder that you'll be allowed up to a half-hour for your presentation. The committee would appreciate it if you'd keep your remarks slightly shorter than that to allow time for questions and comments from each of the caucuses. As soon as you're comfortable, could you please identify yourself for the record and then proceed.

**Ms Louise Primeau:** My name is Louise Primeau, I'm the president of CUPE, Local 1528, and I'm from Sault Ste Marie, Ontario. I want to begin by saying that I deliberately didn't prepare a brief so that I didn't look like I'm an authority on the topic and so that you wouldn't be overly strict with the presentation I'm going to make.

**Mrs Caplan:** You're in very good company. There are very few people here who are authorities either.

**Ms Primeau:** Oh, great.

**Ms Poole:** On anything.

**Ms Primeau:** Great. I'm also going to be holding you to no biting of me. The same rules apply as to the previous speakers.

**Mrs Caplan:** We have the same rules for everybody.

**Ms Poole:** I don't know. We've been restrained for a full hour.

**Mrs Caplan:** That's right. We don't discriminate around here.

1630

**Ms Primeau:** I want to commence by saying that pay equity, the topic itself, is such a complex and kind of ever-unsurmountable topic in fact that we debated at length whether I would come to Toronto to present or not.

Our local is a very small local. We're 60 members or thereabouts; it fluctuates from time to time. I work for the Algoma health unit—I'm a social worker—and our particular group that's coming forward has about seven classifications within the collective agreement.

We're not a very homogeneous group professionally but our concerns are actually on the threshold of just having completed our pay equity contract, and I think I'm here for therapy. I want to say that it has been a very, very difficult exercise for our local, and that is precisely one of the reasons I'm here. I debated at length whether I was going to come through the voice of my local or whether I was going to come through various other voices to be here, because I'm quite an activist in the community.

To tell you the truth, we had exchanged with the employer in 1987 our desire to negotiate pay equity, and it was in July 1992 that we finally signed our contract, on the eve of our employer leaving the agency. It was a very difficult exercise in so far as I think we were not all at the same stage of our development in trying to reach an agreement in pay equity, and for this reason alone I want to talk to you about some of the complexities that have faced our particular group.

First of all, I'd like to begin to say that as I proceed I'm going to be talking about some of the proposed changes that are in the new act and how I see they're going to affect our local.

It was a very difficult task to do the job evaluation in itself. When we sat at the table with the employer, I think we had some advantage over the employer, as we had anticipated the pay equity legislation and therefore we were somewhat ready and the employer was not. In my mind, I think that has to be one of the key factors in negotiating probably a good contract and I think the employer should be obligated and obliged to have some education, because when you come to the table, unlike collective bargaining, I think there should not be an adversarial approach to pay equity.

I think it's most regrettable that pay equity had to be legislated. I'd like to believe that people are all of the same mind and recognize that there has been a wage discrimination and a historical discrimination against women in terms of paying fair remuneration for the work that they do. Nevertheless, that's not the case, and I was most excited at the legislation. I didn't quite comprehend when CUPE was talking many years ago about the difficulties within the act. I didn't quite understand until we walked through this exercise.

First of all, when we sat at the table with the employer, we recognized that we are a predominantly female work site. We are 170 staff, or thereabouts, at the health unit, and approximately 155 are women. Of the other various groups, there is one classification that came within the scope of our particular collective agreement, and that's the inspectors.

At the onset, we tried to negotiate with the employer who indeed was the employer, because we knew many women within our local would be exempt from the legislation, and that was the result of our findings. Because we did not have appropriate male comparators, therefore, out of the 60 people within our local, 50 women were exempt from any pay equity adjustments. Therefore, I feel very strongly that there is a need for the proportionate and the proxy comparators.

I feel I was somewhat enlightened in fact, prior to even understanding that these were proposed changes to the future act. This is something we had actually discussed with the employer, believing that this was the only way we were going to remedy some of the inequities within the health unit staff. We were not successful in our bid to do so, and I want to talk to you about those changes that you're proposing.

For the purposes of our particular group, I want to say we have gone through a tremendous anxiety-producing exercise at the health unit. We have been threatened throughout the process that the pay equity would cost us jobs, that indeed if we were unreasonable about pushing the employer to pay more quickly than it was able to do, we would be faced with some layoffs. Indeed we were, I think, 10 minutes away from that very act. In fact, the commission is going to be visiting us on Tuesday about some of these things.

Nevertheless, I'm here to just talk about why at present the act—first of all, I want to reiterate and probably lend my support to the remark about: "It's a very difficult act to comprehend. It doesn't read very easily and it's hard to follow."

One of the suggestions my local would like to table is that it's our belief the job evaluation measuring tool should be standardized. Why I'm suggesting that is that most of our

energies at the beginning of the process were taken up in even trying to agree on a tool that was going to reflect the job skills within our agency. When we agreed on the tool and the committees came forward, the second element we were faced with is that the employer's committee was really not empowered to do very much.

I think the legislation should speak to that as well. When you send a committee forward to negotiate with a local or with interested parties, those who are at the table should, in essence, have a mandate to actually not only negotiate but represent who they're supposed to be representing. That was a great big barrier in our agency.

The employer did not really want to be at the table but did come to the table, and we negotiated a settlement. To date, we haven't achieved the settlement because the 1% of the payroll was not set aside. The 1% gives me great concern, because I think it in some ways restricts any movement you have in any kind of way. The employer understood, by the legislation saying 1%, that there was nothing to negotiate, that it was a mere calculation and that was that. In fact, we were virtually denied an opportunity to sit across from the employer to discuss how that 1% was going to be divvied up and the stages at which the implementation was going to occur.

The 1%, in my mind, is very restrictive. If you take an agency as small as ours—170 people of which 155 are women—and if we do proceed with the proportionate and proxy comparators and you divvy up 1%, that in my mathematical mind ends up being a box of Kleenex for each worker. I certainly don't think that's a way of remedying the inequities within this particular work site.

The other thing that has occurred to me in terms of the proportionate method of comparison is that I believe very strongly that if there are no male comparators within your work site immediately and then you go on to the next level of comparison, if you use the proportionate method per se—because in many of the organizations I've been attached to, the hierarchy is generally male. When you look at the entrance wage compared to the top-end wage, I find it difficult to believe there could be perhaps, when you evaluate the entrance being at one particular level and then the top-end, there might be four times the job evaluation value to the top-end but it might be 10 times the earning capacity as the entrance.

When we look at this proportionate value, I have some concerns that for sure it's going to disrupt some of the relationships in an organization. I think they're disturbing anyway and need some disruption, but again, I'm concerned. Because of the state of the economy, I know there has been some suggestion in the act that there be a delay in the implementation of the changes to the proxy and proportionate comparison. I don't believe it's fair to ask women to be burdened any further—already having a low income to begin with—to delay rectifying the problem when we now have the knowledge, skills and methodology to do so.

1640

I just want to open one of my brief notes about the proportionate method. When we finalized our job evaluation exercise, it became disturbing to us to note in numerical order that if you do not have a male comparator, you are going to be exempt from redress. There was nothing in the act that said to

the employer, "You're going to have to look at the anomalies this exercise has produced." There were obvious, glaring anomalies within our structure and there's just very little we can do through this particular exercise.

It was again very anxiety-producing for the CUPE members within my local that not everybody understood the exercise and what was intended. They thought we had the leverage or the power. All we had to do was enlighten the employer that they were underpaid and that was going to be it. We were all going to have a cheque in the mail the next day. As you know, that's not the case.

It really produced havoc in the ranks. People thought their union perhaps underrepresented them, perhaps undervalued their job, perhaps overvalued some jobs. I think in order to re-establish some fairness and equity, absolutely the most moral thing that has to be done is to proceed with proportionate and proxy comparisons.

I'm not going to talk a lot about the proxy comparisons. Although I understand them to a degree, I think because we have the health inspectors in the local and they're predominantly and historically male, that's going to end up being the comparator for our local.

When we looked at the job evaluation system and we rated and weighted certain values, once that was negotiated fairly among the CUPE committee representing the local and the employer, we did not believe the employer could be empowered to come back and say, "We don't like the end result of what you've produced and we're going to change things around." Indeed, that is what has happened at the health unit.

I want to speak a little bit about the necessity of maintenance. I know there is an element in the new proposals that will weaken that component and I think that is going to make us vulnerable once more. We're going to have to go over our exercise once more if we do not put in a maintenance plan that actually legislates the need to review very regularly and very systematically so the gap doesn't widen once more. If the gap does widen, it seems to me this exercise was one of futility and certainly very non-productive.

There's one last point I want to make about the proportionate method of comparison. That sounds very good in theory; however, if your male comparator turns out to be one that has regionally and provincially not done well in terms of collective bargaining, that means we're faced with a comparator that probably is also underpaid. In our local that's very much the case. When we go to bargain, I think maybe because we're isolated, we don't always do that well in terms of setting standards and moving ahead.

Our local has just recently come through an eight-week strike. It was not one that was financial in nature, it was more one that was principle in nature. Therefore, our relationship with the employer is sometimes strained.

This proportionate aspect concerns me a little bit. It would then mean that the salaries will be fair in terms of the internal structure, if you want to look at the pay equity component, but I don't think it would be fair if you looked at our organization and compared it to perhaps another health organization where they might have had a more progressive relationship with the employer and more progressive bargaining. Those people have had pay equity settlements that will be very different than the ones we have.



I think I'll stop there, if you have some questions. I'm 15 minutes right on.

**The Chair:** Each caucus has about five minutes.

**Mrs Caplan:** We appreciate your coming down from Sudbury.

**Ms Primeau:** Sault Ste Marie.

**Mrs Caplan:** Sorry; I know what a sensitive issue that is.

**Ms Primeau:** Well, Sudbury's my home town, so I'll forgive you.

**Mrs Caplan:** I appreciate that.

You started out by suggesting you were a little bit nervous in coming before this committee and also explaining the complexities and technicalities of the whole concept of pay equity. I'd like to compliment you. You're a very articulate spokesman. It was very helpful to the committee to hear from someone who has sat and negotiated a pay equity plan. I'm aware of how difficult it is with any new piece of legislation to enact that and implement it.

I was really proud of the legislation that was brought forward and passed in 1987, but it's good to hear from someone who worked with it. As in any new concept that is as complicated as this, it's also good to know that people working out in the field have mastered it as well as you have. I want to compliment you, because I think you've done the committee a great service though your explanation of what you've gone through.

The concerns we're hearing about this legislation, Bill 102 and Bill 169—we've heard this from some—is that while there are some concepts in this legislation which sound very good, the tradeoffs, as they've been described by some, or the Peter-to-Paul payment system my colleague Ms Poole described has led some to believe—CUPE was here and the bottom line for it was that it was not worth the effort because it was a step backwards. We heard that from the Ontario Nurses' Association, that its members would not benefit, that this legislation was regressive and would not result in positive improvement to a plan, which while not perfect, has been working now for a few years.

I'm wondering if you're aware of the positions taken by the Ontario Nurses' Association and CUPE and whether you've looked at Bill 102 from the standpoint of your own members who have dealt with and negotiated a plan, recognizing that it delays the use of proportional and proxy by three years, removes the obligation for maintenance, and as was pointed out to us, affected some of those fundamental principles of the legislation as it was originally—I know a lot of people were disappointed with some of those aspects of it and I wondered how you felt about it. I'm not talking about the complexities of how a plan is implemented, but am dealing now with the principles and provisions of this particular bill.

**Ms Primeau:** I want to say first of all that I'm very pleased the presiding government is going to move with pay equity. I think it's heroic in the current climate. They're going to be challenged by those saying, "This isn't the time." Nevertheless, I think it's a moral obligation to proceed. I think the 1987 legislation fell very short. It was very innovative, it was very timely, but nobody could possibly have comprehended the magnitude of the legislation until they worked through it.

I have to say, as far as the health unit goes, that I know ONA, my colleagues in the health unit, are not at the same stage we're at. They resisted negotiating with the employer and defining who the establishment was in the beginning because they believed they were going to get boxed in. I can't speak for that group; I can speak for mine.

As far as the proportionate and proxy comparisons are concerned, I don't see any other alternative to rectifying the historic, predominantly female wages that have gone on at work sites. I don't know. In fact, as I said earlier, I thought I was somewhat enlightened, because that's something that I proposed the employer consider, not knowing this was something that was likely to come before any committee.

Three years ago I said to the employer, "If it turns out that the exercise produces that there are no comparisons for clerical staff, will you consider the inspectors as a comparator and come up with some formula with a pro-ratio kind of a thing?" So I feel like I was maybe a little ahead of my time.

1650

**Mrs Caplan:** You mentioned three years ago. One of the concerns that has been expressed is that in March 1990 the former minister announced, as a matter of public policy, that proportional value would be a forthcoming amendment, and many employers included that in their discussions of the plans. The plans have gone forward and the payouts have begun.

The suggestion is that this legislation is rewarding those who didn't negotiate and is allowing them an additional three years, whereas those who went ahead in good faith and negotiated job-to-job, and in many cases included proportional value, because they recognized it would maintain equity within their job classification system, are now being penalized.

**Ms Primeau:** Yes, I happen to agree completely with that mode of thinking. I do not believe that a day longer is reasonable. I believe that it was incumbent upon agencies, employers, everybody to get ready for the exercise, get prepared, put the 1% aside, and move ahead. It's unfortunate if we were not all of the same mode of thinking. That is regrettable, but the day is here where we have to address inequities, and I think to defer or to delay is an injustice, particularly since we're now acknowledging—if anything, that's what the legislation did. It came forward and it said, "We recognize that there has been wage discrimination."

The difficulty in the exercise that my group encountered is that once we finally said, "Okay, we're at the table; whether we're here willingly or not, we're here, and we're going to do this," the most difficult thing is to get everybody on side to recognize a value of a predominantly female job.

**Mr Tilson:** Ms Primeau—I trust I pronounced your name correctly?

**Ms Primeau:** It is.

**Mr Tilson:** Thank you for coming. You have given a different perspective, from someone who's negotiated a plan, and we'll be watching the results of that. I think you indicated the commission is coming to your city and it'll be interesting to see the results of that. I wish you well.

There has been some discussion today on the editorial in the Toronto Globe and Mail, which you may or may not have seen. It's probably a little controversial, particularly from the

feminist point of view. I'd like to read to you portions and ask your comments.

The person who wrote this editorial indicated that there were essentially three ingredients that were necessary to understanding the wage difference: (1) education, (2) hours worked, and (3) marriage. Then whoever wrote this goes through and talks about those three things. One of the statements that was made was: "Sex discrimination in wages—paying a man with the same qualifications more than a woman to fill exactly the same position—is against the law, and has been ever since Bob Rae was in short pants."

**Interjection:** When was that?

**Mr Tilson:** When was that? I don't know when that was. However, it's the conclusions to this editorial that I find interesting. It talks about the third of the topics that were raised by this writer:

"But the biggest factor is marriage. The earnings of single women, single men and married women working full-time are roughly comparable. But the earnings of the average married man rise above those of everyone else. That is the only real 'wage gap.'"

Then the editorial concludes by saying:

"But why is it that many married women work only part-time, or adopt less time-consuming (and less well-paying) full-time careers? Are they forced to by their husbands? By circumstance? By entrenched social attitudes? Do many, for a whole variety of unquantifiable reasons, freely choose this path, thinking it best for their families?"

It is interesting, in the concluding moments of the hearings of this committee, although we are going to be getting into clause-by-clause, that many of these topics have not been raised. We've simply dealt with the fact that there are inequities between women and women. We've heard from nurses who have said that there are inequities between certain nurses in certain areas and other nurses in other areas, female nurses. Of course, most of the emphasis has been on the inequities in wages between men and women. That, I'm sure, is the main intent of this legislation, and perhaps quite rightfully so. But there are other issues, these other issues, and it could be said that many of these topics do contribute to the whole subject of this wage discrimination.

You have indicated that you are an activist. Good for you. We need activists to keep people like legislators in this place on their toes. I'm glad you've said that you are that and that you're prepared to come and tell us your views. Is it possible to legislate attitudes, to change the way people think, to change not only the way men think but the way women think? This legislation, I believe, is designed to do that. It may be a start, and many people say that it's not moving fast enough, that this inequity exists now and we can't wait till the time frame that these people are putting off, that we can't afford to wait, that we've waited since time began for this, that we simply can't wait any longer. My question to you, again, is, can we legislate attitude?

**Ms Primeau:** The simple answer is that we have to. Unfortunately, we have to. I wish we lived in an ideal world where we did not have to have the intervention of government, but I believe that government is there, in some ways, to help the disadvantaged groups, to legislate. There is

a barrage of legislation: human rights, employment standards, minimum wage, all these things. It is regrettable to say they would not be there if they weren't legislated. There's just not a progressive mentality that would say: "Yes, this is your worth. We recognize your worth and so be it. Voilà, this is how we're going to do it." I'm saying that this pay equity is absolutely essential.

**Mr Tilson:** The problem is that we're not just trying to educate men and how men think; we're trying to educate how women think.

**Ms Primeau:** Oh, I agree.

**Mr Tilson:** The last paragraph that I read, they're wonderful questions this committee has never dealt with. When we're talking about the subject of pay equity, it's too bad we haven't dealt with these questions. It's too bad this government hasn't addressed them. I'm not so sure that I think we should be legislating how people think. I think perhaps it should be more a matter of education.

I realize that you as an activist may disagree with that, because it may well be that the other process is moving too slowly, that the activist's view says: "This is to get things moving. Otherwise, we'll be for ever getting things changed." But they are interesting questions. Why is it? When you think of married women working and the percentage of married women working, many of them only work part-time and do adopt less time-consuming and less-well-paying full-time careers. Isn't that too bad, particularly when the same article—I have no idea whether it's accurate or not; I can't even—

**The Chair:** Mr Tilson, please—

**Mr Tilson:** I'm sorry. There is particularly the question, of course, of these younger women. Fifty-three per cent of full-time and part-time university students are women and yet these attitudes continue to exist.

**Ms Primeau:** If I'm allowed to say, I'd like to add that it is irrelevant whether I work part-time or my colleague works part-time. The value of my job is what's at stake. Whether I work three hours a week or I work 103, I should get paid exactly the skill level of responsibility and the other factors and those components. That should be recognized. Unfortunately, it has been ingrained in us as women to devalue.

**Mr Tilson:** Exactly.

**Ms Primeau:** I think when you pointed out in terms of our committee—I said earlier that our committee was not all men. We have to educate ourselves as well, but all of these other factors are for some other committee and some other issue to be dealt with. When I look at my work, I am asking for government intervention, in a sense, to look at legislating something that is going to protect and I guess dissipate the wage gaps.

**Mr Tilson:** Your comments have been most interesting. Thank you.

**The Chair:** Thank you, Mr Tilson. One final question, Ms Harrington.

**Ms Poole:** On a point of order, Mr Chair: I've been quite well-behaved this afternoon, but Mr Tilson just raised the Globe article and the questions that the Globe asked. I'm very perverted because I spent my lunch hour drafting a letter to



the editor and I will probably simmer if I don't put this on the record.

**Mr Tilson:** Let's wait and read about it in tomorrow's paper.

**Ms Poole:** It'll never get printed.

**Mr Tilson:** Well, do it another time. If she is going to be entitled to the time, I wish to have more time.

**The Chair:** You're right. There is no point. Thank you, Mr Tilson. Ms Harrington.

**Ms Margaret H. Harrington (Niagara Falls):** I want to comment very briefly on the question that Mr Tilson raised. I believe it is up to us, as legislators, to provide some leadership, but we cannot be out of touch with the rest of society. We have to constantly be in touch with where people are at, but we do have to provide that leadership. This is why I believe it is so important to have women involved in politics.

My other thesis is that women also have to have economic power in order to be treated as equals in this society. Of course, this is what this is all about that we're dealing with this afternoon. Economic power means they have to have some independence, some choice in their lives, and they can't do that unless they have an economic base, as you all know from many different circumstances.

I want to ask you, and I also I just want to note that the recognition of part-time work, as credible and essential, is part of what we're trying to go towards as well. How do you see the importance of trying to get 50% of women in politics to carry through in changing attitudes?

**Ms Primeau:** It's very essential. I have to say that most of my life I've been disadvantaged in some way. I'm a late bloomer, if you want. I went back to school as a mature student. I've only been in the workforce—this is my 12th year in the field. I had but a grade 8 education. I was econom-

ically dependent, and when I made some choices I guess I was very naïve in looking at social work, because I hadn't looked at the wage differences. I assumed that if I needed five years' university, I would be paid fairly and equitably, and that at some point in time I would be able to absorb that major student loan I had done.

I have made just humongous changes in my life. I believe women have to be politically active and that you have to come forward, but that's not easy for women to do. I know that when I come forward on behalf of my local, there are not 55 other women standing behind me willing to do that. Some people are more complacent. They don't want to rock the boat. They want the end result, but in our local it's sometimes very difficult to say what you have to say in a very non-threatening way. I think sometimes it's just critical. You have to be there and do it. That's why I'm here.

**Ms Harrington:** Thank you for coming.

**The Chair:** Thank you, Mrs Harrington. Ms Primeau, on behalf of this committee, I'd like to thank you for taking the time out this afternoon and coming and bringing us your presentation.

Seeing no further business before this committee—

**Ms Murdock:** We come back, not next Monday but the Monday following, at 1:30 in the afternoon. Is that correct, Mr Chairman?

**The Chair:** I'm just about to announce that. Before I do, though, I understand we have somewhat of an agreement that all the amendments would be in to the clerk by Monday morning, February 1, so that they'd be presented to the committee on Monday afternoon.

Having no further business, this committee stands adjourned until February 1 at 1:30 pm.

The committee adjourned at 1705.





**Substitutions present / Membres remplaçants présents:**

Arnott, Ted (Wellington PC) for Mr Runciman  
Caplan, Elinor (Oriole L) for Mr Chiarelli  
Lessard, Wayne (Windsor-Walkerville ND) for Mr Morrow  
Mathysen, Irene (Middlesex ND) for Ms Carter  
Murdock, Sharon (Sudbury ND) for Mr Wessenger  
Poole, Dianne (Eglinton L) for Mr Mahoney  
Tilson, David (Dufferin-Peel PC) for Mr Harnick  
Harrington, Margaret H. (Niagara Falls ND) for Mr Winninger

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service  
Hopkins, Laura, legislative counsel

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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\*In attendance / présents

(Continued overleaf)





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## Legislative Assembly of Ontario

Second Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Monday 1 February 1993

### Standing committee on administration of justice

Pay Equity Amendment Act, 1993  
Public Service Statute Law  
Amendment Act, 1993

Chair: Mike Cooper  
Clerk: Lisa Freedman

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## Assemblée législative de l'Ontario

Deuxième intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Lundi 1 février 1993

### Comité permanent de l'administration de la justice

Loi de 1993 modifiant la Loi  
sur l'équité salariale  
Loi de 1993 modifiant des  
lois en ce qui concerne  
la fonction publique

Président : Mike Cooper  
Greffière : Lisa Freedman

Publié par l'Assemblée législative de l'Ontario  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 1 February 1993

The committee met at 1352 in room 228.

PAY EQUITY AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT LA LOI  
SUR L'ÉQUITÉ SALARIALE

PUBLIC SERVICE STATUTE  
LAW AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT  
DES LOIS EN CE QUI CONCERNE  
LA FONCTION PUBLIQUE

Consideration of Bill 102, An Act to amend the Pay Equity Act / Loi modifiant la Loi sur l'équité salariale, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act / Loi modifiant la Loi sur la fonction publique et la Loi sur la négociation collective des employés de la Couronne.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. Today we'll be continuing with Bill 102, An Act to amend the Pay Equity Act, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act. This afternoon we will be handling technical questions from the two ministries.

MINISTRY OF LABOUR  
MANAGEMENT BOARD OF CABINET

**The Chair:** We have with us, from the Ministry of Labour, Ms Catherine Evans and Mr James Thomas, the deputy minister; and Ms Kathy Bouey, assistant deputy minister, and Barbara Sulzenko. Welcome back. Before we get started, I believe we have a motion from Mr Arnott.

**Mr Ted Arnott (Wellington):** Thank you, Mr Chairman. I wish to move the following motion. The committee members, I believe, have a copy of it, and it's somewhat amended. I'll read it as follows:

Would the Treasurer and Chairman of the Management Board of Cabinet provide the committee members with the following information:

(1) The annual pay equity adjustment costs for the Ontario public service for the years 1990, 1991, 1992 and 1993;

(2) The projected annual pay equity adjustment costs for the Ontario public service for the years 1994 to 1998;

(3) The company name and total amount paid for any consulting services that the government acquired to assist with the development of pay equity plans for the Ontario public service;

(4) The annual pay equity adjustment costs for the broader public sector, with a breakdown for school boards, hospitals, municipalities and colleges and universities, for the years 1990, 1991, 1992 and 1993;

(5) The exact dollar amounts transferred from the provincial government to school boards, hospitals, municipalities

and colleges and universities to assist the broader public sector with pay equity adjustments;

(6) The projected annual pay equity adjustment costs for the broader public sector, with a breakdown for school boards, hospitals, municipalities and colleges and universities, for the years 1994 to 1998;

(7) The estimated pay equity adjustment costs for private sector employers with 500 or more employees for 1991, 1992, and 1993;

(8) The estimated pay equity adjustment costs for private sector employers with 100 to 499 employees for 1992 and 1993.

Thank you, Mr Chairman.

**The Chair:** Thank you. Questions or comments?

**Ms Dianne Poole (Eglinton):** I appreciate the fact that Mr Arnott has brought forward a number of these questions. In fact, he has made official the request for information I was going to make today. My question for representatives from the Ministry of Labour is, recognizing the fact that Management Board and Treasury are not represented here, how soon can you realistically get us these data? Second, are some of these data unavailable? For instance, number 8 refers to private sector employers, and I wonder if the ministry would even have these kinds of data available.

**Mr James R. Thomas:** First of all, there are people here from Management Board who may be able to assist with the answer to the question of how long it will take. I would think it will require some efforts on the part of several ministries, not just Treasury and Management Board of Cabinet. I would think that the Ministry of Labour would have some of the information, particularly as it pertains to items 7 and 8, Ms Poole. I think I'm going to have to get back to you in the next day, if I could, on how long it might take to do it, because I just don't know whether that information is readily available. But perhaps my colleagues would like to comment on the first six points.

**Ms Kathy Bouey:** I think Jim has summarized the situation. I think we can probably identify, with a bit of digging, the historical pattern of the OPS costs and certainly what might have happened in terms of consulting services. I'm not in a position to know what would be involved in terms of getting the breakdown for questions 4 through 6. We would have to check with Treasury on that. In part, it's an issue that some of these costs are not knowable until the pay equity plan has been filed and Treasury has surveyed the various ministries and the ministries have surveyed their organizations to see what is actually required.

**Mrs Elinor Caplan (Oriole):** Supplementary to that, I understand Ms Poole's difficulty with this motion, because certain assumptions were made originally, and it's my understanding from the testimony before this committee that the

assumptions have been fairly accurate. I'm referring to the assumption of 4% to 5% of total payroll. It's my understanding, if you could confirm it, that for most of the plans that have come in within the public sector and broader public sector, where they have already completed a plan, those original assumptions of 4% to 5% of payroll have proven the norm.

**Mr Thomas:** We can answer that, Ms Caplan. I think the figures we have would say that it has been 4% to 5% or less. We did come prepared to talk to you in general terms, if you're interested, about how the expenditures were forecast, which is a more general answer perhaps than some of the questions, but if you'd like to pursue the issue of costs, we could do some of that this afternoon.

**Mrs Caplan:** The difficulty with this PC motion is that it asks for exact dollar amounts and that sort of thing, which I think would be difficult to document because so many of those in the broader public sector have not completed their plans; whereas what I've heard you say is that for those who have completed plans the assumption of 4% to 5% of payroll has been the experience or, as you've added, less than that, not more. So the actual cost is what was expected at the time the legislation was passed, but it's very hard to document on an exact dollar basis. Is that—

**Mr Thomas:** That's right. My further recollection, Ms Caplan, is that I was involved in the negotiation of the government's pay equity plan with OPSEU. My recollection is that that was a plan that ran at about 3.5% of payroll. I think that when you talk 4% to 5%, you're in the ballpark; you may be in the upper end of the ballpark. We are certainly prepared, if you would like, to talk to you this afternoon about the kinds of estimates that gave rise to, for example, the \$1-billion commitment the Treasurer has made over the next period of years. We would be happy to share that information with you.

**Mrs Caplan:** It might be fair to say that while we could have a full discussion of the cost experience to date, this motion, as presented, would put a lot of people to a lot of effort without producing any more information that we could discuss today. Is that a fair statement?

1400

**Mr Thomas:** I'm not sure how much use it would be, compared to having a discussion about how one forecasts the potential expenditures arising out of the methodologies that are contained within Bill 102.

**Mrs Caplan:** One last question: Points 7 and 8 refer to the private sector. Do you have information, or does the Pay Equity Commission have information about the experience? We know a number of private sector employers have negotiated plans. Have they also gathered that information, to let us know whether or not the cost of those plans was within what we had contemplated when the policy was developed?

**Mr Thomas:** If you'd like, we can check with the commission on that, Ms Caplan. My information from my staff is that the only information the Ministry of Labour has is anecdotal and that the adjustment costs tended to be lower than one would have expected.

**Mrs Caplan:** Repeat that again. The adjustment costs, from the anecdotal evidence from the private sector—

**Mr Thomas:** Have been lower than one might have expected.

**The Chair:** Mr Arnott.

**Mr Arnott:** I'm quite disturbed by what the member for Oriole just tried to present in the way of an observation, to suggest that this information would be of little utility to this committee. I think it's absolutely essential. I know, in speaking with a number of my constituents in the week between the presentations to this committee, and this one, now starting into clause-by-clause, constituents in Wellington were absolutely aghast when I told them we were entering into something about which we had really no exact idea of what it was going to cost.

I think it's absolutely essential that this committee have the best information it can with respect to the cost. If we can't have exact dollar figure projections for the next few years, I would expect that the ministry would have some projection at least, the best estimate it could provide us. I think that's absolutely essential, and I don't think it would be wasting anybody's time to present this committee with dollar figures of what this bill is going to be costing.

**Mr Cameron Jackson (Burlington South):** Call the question.

**Mrs Caplan:** On a point of privilege, Mr Chair: I listened very carefully to what my colleague in the Conservative caucus just said. He used words, and I think if you checked Hansard you'd see that I did not say what he said I said. I object and would ask him to withdraw.

**Mr Jackson:** I think you said "limited utility" and he said "little utility." Now that that's been clarified, could we call the question, Mr Chair?

**The Chair:** We still have Mr Lessard who wants to ask a question.

**Mr Jackson:** So you don't recognize calling the question? That's fine.

**The Chair:** Are you moving closure?

**Mr Jackson:** That's fine. It's only a simple motion.

**The Chair:** I realize that. But in fairness, Mr Lessard has been waiting to ask a question.

**Mr Wayne Lessard (Windsor-Walkerville):** I'm not going to comment on the utility of the information but I do have some concern with respect to a couple of the questions, specifically 1 and 3, that refer to adjustment costs for the years 1992 and 1993. I don't know how we would be able to provide that information. Some of the questions refer to projected costs, and that's certainly something we may be able to provide, but actual costs for years that haven't been completed yet I think may be impossible.

I'm also advised that some of this information may have to come from the Treasurer, and from Management Board staff I am advised that we may not be able to provide some of this. So at this time I wouldn't be prepared to support this motion until I knew exactly what information we may be able to provide. We may find that if we defer



consideration of this, there's some information we would be able to compile.

**The Chair:** Mr Jackson.

**Mr Jackson:** I'm surprised you've never had a request like this. It's quite routine. The answer will come back that this information is not obtainable, so for those who are concerned about that—

**Mrs Caplan:** So why would you ask the question?

**Mr Jackson:** You'd ask the question because there is, by everybody's admission, some doubt as to whether the data can be retrieved. As long as there's doubt, let the civil service proceed to obtain the data. Where it's not available, they will quite candidly and quickly advise us of that. Where there is extensive difficulty, it is the custom that they advise the clerk through the Chair, the clerk informs the committee and we get on with the show. But I don't see why we're debating this motion for some 20-odd minutes now when it's a simple request for information. We'll get the best information that is available at the time. It's an assist to this committee, and when it's presented to the House—and frankly, Mr Chair, I think we can proceed. We're prepared to live with incomplete data, honestly conveyed by the ministries involved, and we accept that.

But to sort of shoot in the dark, to try and determine what is or is not available, we've heard very clearly from the ministry they're willing to provide what they can as quickly as possible. That's always been good for me in the eight years I've been here, so please proceed.

**Mr Thomas:** I just wanted to make the observation, and I think I've made it before, that there is some information that we can provide this afternoon with respect to some of the questions, and to the extent that it would assist in the work you do from here on, we'd be happy to provide you with that information.

**Ms Poole:** There is one additional piece of information that I think would be very helpful to the committee and that is the commitments that government has made for paying the cost of implementing pay equity plans, for instance, in the broader public sector, in the public sector, and whether to date those commitments have been met. Two questions: Have the commitments been made to pay for implementation, as well as the cost of the actual plan and, secondly, have they been met?

**Mr Alvin Curling (Scarborough North):** Just some clarification: I heard you say that in the private sector there was not very much adjustment paid out in regard to pay equity. Is there a study done on that or some available documentation that you could share with us when you say not very much was done? What are you basing that comment on?

**Mr Thomas:** I can give you some this afternoon. I'm just not quite sure at what point you want to hear it. There's a motion with respect to supplying data. I'd be happy to provide that information or whatever information we have as soon as the motion is dealt with.

**The Chair:** We'll deal with the motion first, and then if you want to ask questions and get some of the responses—further questions or comments on Mr Arnott's motion?

**Mr Jackson:** Recorded vote, Mr Chair.

**The Chair:** Fine, recorded vote. Seeing no further questions on Mr Arnott's motion, all those in favour?

**Ayes**

Arnott, Curling, Jackson, Murdock (Sudbury), Poole.

**The Chair:** All those opposed?

**Nays**

Akande, Caplan, Lessard, Malkowski, Mathysen, Wiseman.

**The Chair:** The motion is lost.

Just a reminder to all the committee members that they have in front of them a few more submissions that came in after the public hearings were finished. Tomorrow morning we'll be starting the clause-by-clause on Bill 102.

**Ms Poole:** Mr Chair, just on a point of order or a point of information before we proceed, when I've been in other committees and there has been a tie vote and then it depends on the Chair's vote to break that tie, I may be wrong, but my understanding was that the Chair's responsibility—

Interjection.

**Ms Poole:** It wasn't a tie?

**The Chair:** The vote was six to five against.

Interjections.

**Mr Jackson:** You didn't mention Elinor. That's the problem.

**Ms Poole:** But we had Ms Murdock—

**The Chair:** Mrs Caplan voted against.

**Ms Poole:** Oh. I can't count. What can I say?

**The Chair:** Okay. Now we'll proceed with some technical questions to the staff who were requested to be here today.

**Ms Poole:** I've got lots of questions.

**The Chair:** That's what we're here for. This is what the rest of the afternoon is going to be spent on. Ms Poole.

1410

**Ms Poole:** I didn't prepare my questions in the light of a motion per se, but I think there certainly are certain aspects of the PC motion where it might be quite helpful for us to receive information.

For instance, when we're talking about annual pay equity adjustment costs to the OPS, perhaps we could ask you for 1990 and 1991. I would think that information would probably be relatively readily available even though you might not have final figures in for 1992-83. I think that would be quite helpful if you could provide it.

When the minister appeared before us last week and we asked about the costs, one of the things the minister had responded with was the fact that there had been a survey sent out. I think he was specifically relating his comments to the proxy method, but he referred to a survey that had been sent out to the various organizations asking, I assume, for payroll, what the estimates were of what they thought pay equity might cost and the numbers available as to the people in their particular organizations that would be available for proxy method, for instance. Could you

give us some details of this particular survey that was sent out: when it was sent out, to whom it was sent out and the type of deadline you had for this survey to be back in?

**Mr Thomas:** Just to clarify, the survey that the Minister of Labour referred to was put together to determine the extent to which the government could make, in effect, a down payment on the proxy plan; in other words, to allocate a certain fund of money and to distribute that money by way of a down payment program to women in the lower-paid jobs in the broader public sector.

We surveyed 1,850 organizations. The survey went out, I believe, in early November with a return date by mid-December. We got a return rate of about 80%. The purpose of it was to determine the different female job classes and their wage rates, to determine which ones might likely benefit from proxy and to then decide what sort of payout we would make by way of a down payment, if you will, on proxy.

**Ms Poole:** So this survey was actually only related to the down payment and not any type of attempt to calculate the overall cost of proxy?

**Mr Thomas:** That's right.

**Ms Poole:** Can you extrapolate from those particular figures and give us an idea of the cost?

**Mr Thomas:** No, but I can give you some information on what we're estimating around proxy.

**Ms Poole:** That would be helpful.

**Mr Thomas:** I wonder if I might just take a few minutes on that because that might answer it. If I take you through the analysis that has given rise to some of the numbers we've been using, it might be helpful in terms of directing other questions or perhaps answering some you would like to raise.

If we start with what the Minister of Labour told you a couple of weeks ago, there are approximately 420,000 full-time equivalents, FTEs, who stand to benefit from the new methodologies of proportional value and proxy. When we say FTEs, there are probably more than 420,000 people who would benefit from it, because there are part-time workers and whatever, so the 420,000 represents a full-time equivalent workforce.

Of that 420,000, we estimate 80,000 are proxy beneficiaries, and those would all be in the public sector, and the other 340,000 are proportional value beneficiaries. We've estimated that this is split roughly into two thirds private sector and one third public sector. There would be about 220,000 FTEs in the private sector and 120,000 in the public sector who would benefit from proportional value.

I take you through that before we get to the money part to give you a sense of how we think the sectors are broken down in terms of how they will benefit from pay equity. Therefore, we're talking, with respect to public sector, which would attract government funding, about approximately 200,000 people who would benefit from the new methodologies, the 80,000 proxy and the 120,000 public sector.

We estimate that the wage bill for the relevant sector is about \$8 billion. That's what is referred to and is becoming, actually, a well-known phrase, the non-MUSH wage bill, "non-MUSH" referring to not in the municipalities,

universities, schools or hospitals and colleges. It tends to be the lower wages. It tends to be the female establishments that are in the non-MUSH broader public sector, on the theory that those in the MUSH sector already received pay equity or are entitled to get pay equity through job-to-job. I think that's accepted as being reasonably accurate.

So the wage bill we're concerned about here is about \$8 billion for the provincial portion. The province doesn't pay all of the funding to non-MUSH agencies and we've estimated a 20% factor to add on to that to get you a total wage bill for the sector. So we estimate the total wage bill for the non-MUSH sector at about \$9.6 billion. I tell you that because it's an important figure in that legislated requirements are based on percentages of payroll.

**Ms Poole:** What was the \$8 billion?

**Mr Thomas:** The \$8 billion was the provincial portion of the total non-MUSH sector.

**Ms Poole:** And the \$9.6 billion is a total.

**Mr Thomas:** The \$9.6 billion is ramping it up 20% to factor in the fact that the total payroll, when you have municipalities and other people paying into it, is higher, we estimate, by 20%.

The proxy wage bill is estimated at \$3 billion and the proportional value wage bill is estimated at \$6.6 billion of the \$9.6 billion. So if you want to break it down between proxy and PV, it's \$3 billion proxy and about \$6.6 billion proportional value. If you want to talk about this on an annualized basis, as you know, the act requires 1% of payroll annually, so therefore in the proxy sector we would be looking at 1% of \$3 billion or something in the order of at least \$30 million annually.

In fact, \$30 million annually leads to a very, very long period of time before the proxy sector people achieve pay equity. The government, I think, has estimated that the amount it would be forecasting would be spent on proxy each year might be several per cent of payroll, perhaps 3% or 4%, so you might spend \$90 million, say, \$100 million, \$80 million on proxy on an annual basis. But that would be doing better than the 1% minimum you're obliged to spend. On proportional value it would be \$66 million per year. That's the 1% of \$6.6 billion.

Those are the annualized costs. Again, I think you will appreciate that one has to put some significant qualifications around the forecasting. We're dealing with 420,000 beneficiaries in thousands of different kinds of organizations and thousands of different kinds of job classes, and it's impossible to estimate precisely who's going to end up using what system. I think there has to be a qualification placed on it. What we can give you, though, are some ballpark numbers that will perhaps be of some assistance to you. That's what happens with respect to the annualized cost.

There are studies that suggest pay equity recipients receive wage increases of between 10% and 20% of salary. That's not 10% or 20% of payroll. The payroll may only go up by 3% or whatever, or 2% or 5%, but the women who are entitled to pay equity, the studies show, tend to receive wage increases of between 10% and 20%. In an all-female sector, the cost may be closer to 15% of payroll. If the women who are in the proxy sectors got 15% of



payroll at maturity, proxy would cost \$450 million at maturity. And if over the next few years the government were to commit to spending its \$90 million a year, you can do your own calculations for at what period of time one would reach the \$450-million figure.

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In predominantly female sectors, the proportional value sectors, the costs may average 4% to 6% of payroll, because there are a number of people in the sectors who don't receive pay equity adjustments yet are part of the payroll. We estimate that the proportional value cost at 4% to 6% of payroll would be something in the order of \$400 million. The \$400 million is basically 6% of \$6.6 billion.

So if you ask how the government came up with \$1 billion, it took the fact that there's been about \$120 million spent on the OPS pay equity plan; we will provide information on that breakout over 1990 and 1991. Also, there is an estimate that about \$175 million still remains to be spent on job-to-job; in other words, we're not finished job-to-job yet and we're not required to finish job-to-job until 1998, according to this bill. Also, there's about \$175 million that would in effect not be attributable to Bill 102 but would be the \$175 million of still unspent job-to-job moneys that will become owing. We estimate that proportional value will be about \$400 million at maturity, and proxy will be something in the order of \$285 million over the next three years.

So that's how the government came up with the \$1-billion figure. Once that billion dollars is spent, the government would therefore be saying that we had reached maturity on PV and job-to-job but had not reached maturity on proxy, because we're not required to reach maturity on proxy. I mean, there's no deadline for proxy the way there is a deadline of 1998 for proportional value and job-to-job.

That's one set of information that I think you should know, in terms of what has been the government's thinking and how the billion dollars is allocated between the various methodologies.

The other piece of information I might bring to your attention—and this may go to one of the points that Mr Curling raised and that the Conservative motion has asked for in its latter two parts—is that the pay equity office commissioned two survey studies to help monitor the implementation activities of pay equity. These studies—one was done in 1990 and the other in 1991—are based on a sample of employers.

They showed that employers often do not have clear-cut estimates of pay equity costs, but that total adjustments to be made to achieve pay equity, as reported by the employers in the surveys, were a small fraction of the annual payroll. On average, the estimated total adjustments would amount to 1% to 2% of current annual payroll. The total pay equity adjustments estimated by public sector employers averaged about 2.2% of payroll, which I think is building on the answer I gave to one of your earlier questions, Ms Caplan, about the expenditures in the public sector, that yes, there will be some that would be 4% to 5%, but some are somewhat less than that. The average total adjustments estimated by private sector employees with 100 to 500 employees was 1.2%.

Those are studies done in 1990 and 1991, and they do tend to show that the payouts with respect to the private sector have been lower than one might expect.

That, I think, is the sum total of readily available information, Ms Poole, that the Ministry of Labour is able to furnish you with, but we'd be happy to try and explain it a bit better or take any other questions you might have, if you want us to go and search for more.

**Ms Poole:** I have a number of questions, if I could perhaps ask one more before rotation, just to be fair about this.

When you were talking about the dollars in mature costs, you outlined \$1 billion as the total of those various areas. What was your year for reaching those mature costs? I appreciate the fact you said that with proxy there is no deadline, but were you talking about 1 January 1998?

**Mr Thomas:** Yes, 1998.

**Ms Poole:** I have something that was given to me by one of the groups that are very involved in pay equity. It is a memo from the Ontario Ministry of Labour. There's no date on the memo but it was prior to the beginning of December, because that's when I received the memo. It was outlining the costs for pay equity, which are identical to what you just named, but it said dollars in mature costs by the 1994-95 fiscal year.

**Mr Thomas:** Yes. That was the original deadline in the Pay Equity Act, before the three-year extension on the deadline to reach maturity. The maturity numbers haven't changed; the length of time to realize those or to get to those has changed, by Bill 102.

**Ms Poole:** So in effect, what the three-year delay in the public sector of achieving pay equity means is that the next government will end up paying the tab for a significant proportion of this \$1 billion.

**Mr Thomas:** No. One has to recognize that all of these costs are additional add-on costs. It's simply a matter of: At what point are you able to increase the payroll by \$800 million or \$700 million? That would happen in 1995 with the Pay Equity Act, in which case that level of funding would need to be required in future years; or you can do it by 1998, in which case you actually have several years after 1995 when you are still ramping up to the mature costs.

**Ms Poole:** But wouldn't it be true that if January 1, 1995 were the deadline for achieving pay equity, that would mean that in 1992, 1993, 1994 the majority of your public sector would have bought into it and would have implemented its plan and would have achieved pay equity; while what's happening under this is that you'll have a significant sector of the public service that will actually not get its equity adjustments till three years later? It really has delayed the achievement of pay equity, which must mean that it will also have delayed the cost for the government.

**Mr Thomas:** That's true, except for the fact that if government is going ahead with a pay equity methodology or a series of methodologies that in total are going to cost \$1 billion, then that means you are increasing your payroll base, your transfer payment base, your whatever, by \$1 billion. The only question is, when do you do that? Do you

do that by 1995, in which case your expenditure budget is \$1 billion higher, or do you do it by 1998, in which case your expenditure budget is \$1 billion higher than it is now, three years later? In either case, your expenditure budget at some point is \$1 billion higher.

I take your point. I'm just trying to explain, though, that in any event the money is folded into the base and becomes an ongoing government commitment year after year, either from 1995 on or from 1998 on, depending on which act or bill you're referring to.

**Ms Poole:** I'd like to allow some other members to have their questions; if possible, I'd like to go back on the list, because I do have some more questions in this line.

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**The Acting Chair (Mrs Irene Mathyssen):** Certainly. I'd just like to remind committee members that there is no formality to this procedure. I will simply recognize you as I see your hand. Feel free to ask questions at any point. Mr Arnott?

**Mr Arnott:** I have no questions at this time, Madam Chair.

**The Acting Chair:** Mr Jackson, did you have a question?

**Mr Jackson:** Did you see my hand?

**The Acting Chair:** No, but you seemed to be nodding. I thought perhaps you were—

**Mr Jackson:** Approving everything you say, Madam Chair.

**The Acting Chair:** I'm glad. I will refer to that statement at a later date. Are there any other questions?

**Ms Sharon Murdock (Sudbury):** On that last point, my understanding on what Ms Poole has asked—correct me if I'm wrong—say a \$1-billion cost is there for pay equity, either job-to-job or for proportional value, to 1995. The government of the day, whichever it was, would have \$1 billion to pay out over two years. By extending it to 1998, you have \$1 billion over five years, but then that \$1 billion has to be incorporated into the base for ever. I didn't think that was what Ms Poole was saying. I didn't think, from Ms Poole's question, that that's what she was saying. I just wanted to make sure that you and I are on the same wavelength.

**Mr Thomas:** That's right. Using your numbers as hypotheticals—and they are—if you had committed to spending \$1 billion on pay equity because of the methodologies, and you decide you're going to do it in two years, then you're ramping it up at \$500 million a year, at which point you then are at a new base level \$1 billion higher. If you ramp it up over five years, you are doing the increase over a longer period of time: 200 million new dollars added to the base each year for five years. But at the end of the day you're still at \$1 billion.

**Ms Poole:** I'd like to explore the cost of proxy. It is my submission that the government's delaying proxy by that one additional year from what Bill 168 required will mean that payouts at the earliest would be in 1994. According to people in the child care sector, they believe they really won't see anything till the beginning of 1995. I would

assume that the government will make some sort of commitment to the proxy agencies that they will be picking up both the cost of the plan and the cost of implementing the plan. Am I correct in that particular assumption?

**Mr Thomas:** My understanding is that if you are on the proxy, there is commitment to pick up all of the proxy costs.

**Ms Poole:** Including implementation of the plan? For instance, if they have to hire a consultant or—

**Mr Thomas:** Oh, I don't know that.

**Ms Barbara Sulzenko:** No. The commitment is not to pay the consulting costs, but rather to pay the salary costs resulting from a proxy plan.

**Ms Poole:** So there is a commitment, for instance, for agencies like the Ontario Association of Interval and Transition Houses, those agencies, that they would in fact have the cost of the payroll picked up, the payroll adjustments because of pay equity, but there would be no picking up of costs to prepare or implement this particular plan?

**Mr Thomas:** I'm not sure of the answer to the second part of your question. I do know that there is a commitment to pay 100% of the proxy salary increased costs.

The other thing is that as a down payment on proxy, the government is planning on spending up to \$50 million this year to people who will be potential proxy recipients, and that's what the survey we were questioned on earlier this afternoon was aimed at discovering. We think most of it will go into the hands of women who would be proxy recipients. It is \$50 million towards pay equity. If 1% is about \$30 million, that's 1.5% or 2% this year that would be going into proxy payments by way of a down payment program.

**Ms Sulzenko:** Just with respect to the consulting costs, of course the pay equity office does provide information and educational materials to assist agencies in the development of pay equity plans. Also, when there is need for dispute resolution, the pay equity office provides its services in assisting the parties in arriving at a resolution of their disputes. The intention there is to conclude the matter and to be able to post pay equity plans, but also to reduce the cost to both parties.

**Ms Poole:** I wish I could share your optimism that the pay equity office will be able to assist to a great degree in formulating this plan. I think it was clear from some of the child care presenters and the shelter workers we had that they find this legislation incredibly complex. They don't understand it. They don't understand how it's to work. They don't understand the terminology. Their fear was twofold: (1) that they couldn't implement this without a great deal of help, and (2) that once it was implemented, with the history of government cutbacks they've seen in the past year, they were afraid they would have to stretch limited resources even further to pay for pay equity.

You may feel more comfortable with the fact that the pay equity office can really help them implement the plan to a great degree, but from what I've heard that simply isn't going to be possible with the resources of the pay equity office or the fact that it's an extremely complex system which people don't really understand.



It may not be a bad time to ask this right now. It is actually related not to proxy but to proportional. I've been talking to some people who work in the pay equity field and they are extremely concerned about the timing, that employers are going to have to be making payments retroactive to January 1, 1993, put a plan in place within, I think, six months of the date of proclamation but retroactive to January 1, 1993.

Yet the employers have been able to get very little information from the Pay Equity Commission as to how this proportional value is going to work. In fact, they have had some experts who have had a great deal of work to do with pay lines, for instance, and they said that when they've been talking to people from the commission they have neither guidelines nor a manual nor anything ready so that they can start work on this, but that they seem to have some rather strange notions about how pay lines are done. They seem to think it's all in a straight line, when people who have worked extensively with this type of thing say there might be a much more gradual curve. It's extremely important that you do the pay line properly.

I am concerned that if you are going to be putting this legislation through—it may well be true that employers have known this was coming, but quite frankly, from a government that said in the throne speech that it was doing it, we had to wait a year before getting the first reading of legislation. Then for another year nothing happened and then, when it did happen, the original legislation was not dealt with but instead a new act was brought in.

Why would employers have gone out and done all this work on proportional, trusting that the government was going to bring it in when the facts showed very clearly that the government was not in a position to proceed? Now you are just going to say with this legislation retroactively, "You must have brought in the plan, but we don't have a whole lot of information to help you in developing this plan." Quite frankly, I think it's going to do a lot of damage to the whole principle of pay equity if we're in chaos, because the resources aren't there to help people.

**Mr Thomas:** Ms Poole, it's my understanding that there were a number of submissions made to the committee over the past couple of weeks on questions around the methodology and which one was the most appropriate and what will work best, and a number of questions that would lead one to conclude that it would be incorrect for the commission to be out there marketing or educating or training on a particular methodology that hasn't been proclaimed.

I can tell you that the commission is well aware and the pay equity office is well aware of the obligation to educate the community when the bill is proclaimed, and is prepared to do so and has developed guidelines and whatever else needs to be done, which can be modified depending on what happens to the bill. But my sense of it is that the commission is ready to roll and is waiting for proclamation of the act.

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**Ms Poole:** In so much as it is inappropriate for the commission to be out there developing manuals and training guidelines before the act is proclaimed, I submit to you

that this is exactly what you're asking employers to do. Whether it be in the public sector or the private sector, they're to retroactively have provided moneys to do all this stuff, yet it may take them some time to get a plan in place after proclamation. I would be very surprised if proclamation took place before May at the earliest.

**Ms Murdock:** Madam Chair, basically, I'm not objecting to Ms Poole's questions if they're technical, but if she's asking for any kind of political opinion or comment upon what they were told to do, I don't think they can answer to that.

**Ms Poole:** But it isn't a political question; it's a pragmatic question. Employers have to deal with this legislation fairly quickly once it's proclaimed. I am very concerned if the resources are not there. As short a time as two weeks ago they were asking questions about the Pay Equity Commission like, "How would this work?" They were saying: "We don't really know. It's pretty complex, so we're not really sure what's happening." I hope there's a whole lot more happening behind the scenes than a couple of people have been telling me who have worked extensively with the Pay Equity Commission in the past. I'm just concerned about how this is going to be implemented.

**Mr Thomas:** I've attempted to address the question about the commission and if it will be ready. The only other thing I can say is that if it is proclaimed in May or June and therefore employers have, in effect, the balance of this calendar year to get proportional value plans in place, I think it's important to distinguish that planning need from the fiscal planning need. The employers are already in the position of knowing that they may well be obliged to commit 1% of payroll, effective January 1, 1993, to pay equity, whatever methodology falls out. So a prudent employer would be making some financial plans around something in the order of at least 1% and would be working with the commission starting in June or whenever it's proclaimed to put together the plan.

I think you can distinguish the retroactive aspect, which is a fiscal issue through which planning could be done now, from the concerns around how one actually gets the plan in place and if the commission will be ready to help. As I say, my information is that the commission will be ready to help.

**Ms Poole:** I hope that is true. I don't doubt that they will be ready to help; it's whether the information and resources that are necessary will be available to help. I guess we'll just have to wait and see on that one.

I'd like to go back to the memorandum from the Ministry of Labour to the Ontario Federation of Labour that I referred to earlier. I'm sorry; I should have been prepared and gotten you copies so you had it in front of you.

**Mr Thomas:** Could I ask for a copy before I'm asked a question about it, please?

**Ms Poole:** I'll hold off on this line of questioning, maybe, for two minutes while we get some copies for members.

Just while we're waiting for it, the line of questioning related to what was going to be the average adjustment to various sectors on an annual basis of having pay equity:

Do any other members have questions while we're waiting, or shall I proceed on to some other?

Since we're talking about the Pay Equity Commission, I will find somewhere on my desk a brief that the Canadian Manufacturers' Association provided in writing to the committee last week which, of course, I can't find at the moment. I'll find it immediately after I finish my questioning.

Anyway, the point the Canadian Manufacturers' Association made was that the Pay Equity Commission and the office developed guidelines and assistive materials to help employers to understand and implement pay equity, but that the tribunal was not bound by these guidelines and that there were instances in which the tribunal came out with a different decision than the decisions made by the pay equity office.

I wonder if you could tell us whether there's any way we could strengthen this legislation so you don't have the Pay Equity Commission, the pay equity office and the pay equity tribunal operating sometimes under different sets of rules, because it seems to me that's counterproductive—whether the tribunal in fact could help develop the guidelines so that everybody's operating under the same set of rules.

**Mr Thomas:** I think that's a good question. The Pay Equity Act, which is still a relatively new piece of legislation compared to other pieces of legislation, is going to end up requiring ongoing interpretations for some time, and certainly the commission has worked very hard, I think, to establish guidelines and policies to assist the parties. I don't think it's surprising. I was on the startup of a new tribunal some years ago, the Workers' Compensation Appeals Tribunal, and certainly there were periods of time in the early years where the guidelines were not always followed by the tribunal. I think that's going to be expected.

The question becomes, I think, how do the organizations handle a decision out of a tribunal that is at odds with a guideline, and will the guideline come in line with the decision or vice versa? I think that's a matter of watching it evolve. I haven't heard a lot of widespread concern about that. I've heard the occasional situation happen. I'm not sure there's been sufficient problems of that nature to warrant legislated change.

I think it's a matter of watching the jurisprudence unfold and seeing if the commission does in fact respond to the tribunal's interpretations. The tribunal is, as you know, interpreting the act and the commission is doing its best to try to come up with its own interpretations, sometimes before the tribunal has had a chance to rule on the same section, because the commission got the case before the tribunal got it. The commission got to deal with the particular section of the act on a practical level before the tribunal got to deal with it.

**Ms Catherine Evans:** If I could add to that, the pay equity office is also very careful when it publishes guidelines to let employers, bargaining agents and employees know that those guidelines do not bind the tribunal. As helpful as they are, employees and employers know that the tribunal does not have to abide by those guidelines.

**Ms Poole:** I can appreciate that, but I just find it difficult when employers and employees are both relying on guidelines to assist them. I would think it may not be a legislative solution that's necessary but perhaps a review of how, with the amount of jurisprudence that you have to date, for instance, areas in which the two, the tribunal and the pay equity office, could work more closely with the guidelines to ensure that they are in fact not something that's going to prove to be a detriment down the line.

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**Mr Thomas:** The tribunal, I believe, publishes decisions, certainly important ones. My sense is that the community out there is pretty well up to speed in knowing when and how to look up tribunal case law and making sure that whatever guidelines might be inconsistent, they assess how to handle the case of an inconsistency between the guideline and the case law.

**Mrs Caplan:** My line of questioning is really supplementary to the line of questioning that Ms Poole has begun, and that is, have you, has the ministry or the government considered the notion, now that you do have that case law in place, of allowing advance ruling? Then when in good faith an employer comes to the commission and gets a guideline and then comes back later and in good faith has devised a plan in accordance with the guideline and is faced with a tribunal decision that's inconsistent with the advice it was given—I know how frustrating that is to employers who have acted in good faith, whereas the concept of advance ruling says it's not a guideline—if you come and you act in good faith and you abide by the ruling that you've been given in advance, then in fact you will be protected and the tribunal will respect the advance ruling that has been given. Has that concept been something that has been considered by the ministry and the government, now that you have sufficient cases to be able to consider advance ruling?

**Mr Thomas:** We have sufficient cases, Mrs Caplan. I don't know whether we have sufficient examples of the problem. In other words, I don't know that moving to advance rulings is the right answer for the number of times that this problem has occurred. Advance rulings carry with them a number of other drawbacks, including the fact that the tribunal would be, in effect, on a particular fact situation, fettering the discretion of the commission. One would want to be very careful about the circumstances in which one permitted that to happen.

You would have to be reasonably confident that you had a very large, serious problem that you couldn't solve in any other way than to go to advance rulings of the tribunal, in effect setting the road map for what the commission could do. That would be a very substantial change in a wealth of jurisdictions.

**Mrs Caplan:** What about the concept then of the commission giving advance rulings so that they would set the parameters for the tribunal? I guess I'm concerned particularly on something where you have employers wanting to act in good faith; you've got significant case law that's in place now. Obviously one of the reasons that



the plans have not been developed is because there are questions. I see you nodding your head.

They've had problems. If they could get an advance ruling from the commission, that would give them comfort, should there be an appeal of the plan, that the tribunal would look at the ruling by the commission. We're now talking about the kind of good-faith plan development, good-faith negotiations with a reasonable employer. Has that been considered by the government, so that the role of the commission, which you're changing in this legislation anyway—so that they could consider advance ruling?

**Mr Thomas:** I think the answer to your question is yes and no. The yes part is that I think the commission already does a fair amount of work in trying to help the parties early on with respect to problems that they are encountering in understanding the legislation or putting together the pay equity plan.

To ask the commission to go further, though, and in effect do an advance ruling that would somehow reflect what the tribunal would do, would be to fetter the discretion of a superior body from an adjudicative point of view. The tribunal takes a lot of pride in the fact that it decides each case on its own facts and its own merits, and to have a commission somehow purport to make a decision that would be binding on the tribunal is I think putting the cart before the horse.

**Mrs Caplan:** To put it in simple terms, the reason for the line of questioning is that it would seem to me that anything we could do to make it easier for good employers to implement pay equity would be a good thing. I'm just wondering, given the experience you've had to date, what, if anything, you're hearing from employers that they would like to make it easier for them to implement.

**Mr Thomas:** We're hearing that certainly the work the commission has done so far in terms of education and the help that it has given in the role of review services is seen to be quite helpful. I think it challenges the one that Ms Poole made reference to, and that is the capacity of the organization to be able to address effectively, quickly and promptly the issues around educating and training of the employers around proportional value and proxy. That's certainly something the commission has been looking at for some time and I believe will be ready to roll on.

**Mrs Caplan:** If I could—Ms Poole, is it all right?

**Ms Poole:** Sure. Go ahead.

**Mrs Caplan:** My next questions are not supplementary but they do follow. You've raised the issue of cost of the development of the plan and the role of the commission in education for employers who are going to be looking at proportional and proxy. I'm interested particularly in the cost of the development of those plans.

Do you have any documentation, whether it's anecdotal or specific evidence, of what the costs of the development of a plan has been for a small employer? I'm talking in the under-20-employees range. Do you know what it costs on average to develop a plan for a small employer?

**Mr Thomas:** No, I don't.

**Mrs Caplan:** You have no idea?

**Mr Thomas:** I'll see if I can find out, though, before the afternoon is out.

**Mrs Caplan:** I know that was a concern that was expressed by a number of the agencies that came forward, many of which would qualify. They have few employees. Some are even under 10, and to develop a plan with proxy comparator, they were concerned about what the cost of the development of the plan might be. I just wondered whether there was any experience as to what a plan costs, not necessarily job-to-job comparator, although we could use that as an example of just what it costs to develop a plan.

**Mr Thomas:** I think the anecdotal evidence is that the cost is very small for the small ones. The small ones tend not to hire consultants. The anecdotal evidence is that the cost for the small employer isn't very large.

**Mrs Caplan:** At what size is a consultant usually required? When you say for small employers, what size do you usually see a consultant brought in for the development of a plan?

**Mr Thomas:** When you say "required," do you mean—

**Mrs Caplan:** Does the employer feel it's necessary?

**Mr Thomas:** I don't know that you could actually pick a size. I can certainly say that a consultant was helpful in the OPS plan, so we know that when it's 80,000 people—

**Mrs Caplan:** I was sort of thinking of something lower than 80,000. We were talking in the range of 20. Certainly as the employer of 80,000, that was quite a task, but we're narrowing it down.

**Mr Thomas:** Okay, so we've got the range.

**Mrs Caplan:** That's right. Bigger than a breadbasket but smaller than the OPS.

**Mr Thomas:** I think part of it depends on the complexity of the employer's business, and I'm not trying to avoid the question, but certainly when you're into many job classes and therefore you're into maybe changing your classification system, some employers have taken pay equity as an opportunity to change their classification system where they have an outdated classification system. How much of the cost of changing the classification system you attribute to pay equity versus the fact that they wanted to go to a new system anyhow is a good question.

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**Mrs Caplan:** Would it be fair to say that any employer with a formal job classification system would feel the need for a consultant to come in to develop the plan?

**Mr Thomas:** No. In fact some of them who have formal ones probably were able to get the pay equity plan off the shelf from the organization that supplied them with their classification system.

**Mrs Caplan:** I guess the next question on the experience was, for the smaller employer without a formal job classification plan, without an understanding of job classification and job evaluation, how could he do a plan without support from a consultant?

**Mr Thomas:** Again, it depends on how many job classes they've got. If they're very small, first of all, they may not have had to deal with this problem because they were one of those ones on one of those charts I showed you where they had female jobs and no male jobs lined up, so for them the exercise up to now was easy. I think the commission has tended to provide most employers who have asked for it with the information they need to allow them to do pay equity plans without the need of a consultant.

**Mrs Caplan:** Thank you. I appreciate the answers.

**The Acting Chair:** Ms Poole, have you your information now?

**Ms Poole:** Yes, I think the clerk has distributed two pages that were part of the memo to the Ontario Federation of Labour about the costing of pay equity. If you look at the first of the two pages, which is entitled Proxy Pay Equity Costing, you'll notice it has a number of subsectors and then it has various estimates of the number who benefit, the full-time average annual adjustment and the annual total cost.

In child care, for instance, it says there will be 16,000 in the female job class who benefit. The full-time annual average adjustment is given to be \$10,000 and the annual total cost \$160 million for the child care sector alone. What I'm trying to figure out is where the figure of \$10,000 as an annual average adjustment comes from? Is this the estimate of when full—

**Mr Thomas:** Page 2 of the notes, Ms Poole—first of all, it is perhaps an example of why I put a qualification on my costing numbers earlier on, and that is that one rarely compares apples to apples when one looks at different charts that have come along at different times.

For example, with respect to visiting home makers and children's aid societies, they took the OPS as the proxy, and the OPS does not show up as a proxy organization on the schedule I tabled last time. In child care, they used municipal child care adjustments moving salaries to the \$35,000 range. Whether or not that's the comparator that would ultimately be used is a good question. Is it?

**Interjection:** It is.

**Ms Sulzenko:** There's another example as well. Developmental services here are cited as 7,000 FTEs, whereas we know there are about 12,800 FTEs in the developmental sector. Presumably this chart has made some extrapolation of those people in developmental services who will be able to do pay equity via some other method, but it's not clear how they arrived at this inference that it's 7,000 out of 12,800 that would in fact be done by proxy.

**Mr Thomas:** My other point is that I'm quite gratified to find a chart come out that is within \$50 million of the suggestion that I put to you earlier on, that proxy-costed maturity might be \$450 million for about 80,000 people. Here's a chart at 74,500 with a total annual cost of \$392 million. I guess it suggests that our estimating is in the right ballpark.

**Ms Poole:** Don't be mistaken; this is from the Ontario Ministry of Labour.

**Mr Thomas:** Things change. I don't know when this was done. It's not dated. It was done at a time when someone thought that using OPS as proxy might be one possibility. Yes, and it is possible that some sectors are going to have significantly higher increases than 10% or 15% and some will have significantly lower. We were putting out a figure of 15% as an average that one might see across the whole proxy sector. That will depend on the degree of undervaluing of the work that women are doing in the various sectors compared to other proxy establishments that are comparators.

**Ms Poole:** I just am concerned that any of the figures that come out—it seems to be a very inexact art right now as opposed to being an exact science, because so much is predicated on what the plans are eventually going to look like.

**Mr Thomas:** But that's the point. When one gets into a legislative amendment that extends proportional value and proxy to 420,000 women working in thousands and thousands of different occupations and companies and organizations across the province of Ontario, one is going to have some difficulty making it the kind of exact science that one would like to make it. But the fact that we are able to look at a number of different ways of cutting it which produce estimates that are all in the same kind of ballpark, I think, should give some comfort that we are able to predict with some degree of accuracy, given all the qualifications I've put on it of what the cost might be.

**Ms Poole:** Does anybody else have questions or shall I keep going?

**The Acting Chair:** Mr Jackson has a question and I believe it's supplementary to yours, so if you would allow Mr Jackson.

**Mr Jackson:** Ms Poole had raised a question about the child care, but isn't the \$10,000—does that not include the bump funding that the province implemented, the five and five? I know that the explanatory page 2 indicates it was from a municipal calculation, but is that not where you arrive at the \$10,000 adjustment?

**Mr Thomas:** By five and five, are you referring to the \$2,000 payment?

**Mr Jackson:** It's more than that. The bump funding was more than \$2,000.

**Mr Thomas:** No, the funding that—I believe what you're referring to, Mr Jackson, the bump funding, was \$2,000 a person.

**Mr Jackson:** And then there was a second bump, or was it split \$1,000, \$1,000 into two instalments?

**Mr Thomas:** I don't know. The only figure that I'm aware of—and I can doublecheck this for you—is that the child care sector received a \$2,000 increase about a year ago.

**Ms Sulzenko:** In 1991.

**Mr Jackson:** Yes.

**Mr Thomas:** And whether that would reduce the adjustment by \$2,000, again I'd have to go back and consider when this table was put together in relationship to that bump funding activity, Mr Jackson.



**Mr Jackson:** You wouldn't mind checking that out for me, if in fact it is eight or 10 and therefore 12 or whatever.

**Mr Thomas:** Not at all.

**Mr Jackson:** Thank you.

**Ms Poole:** I'd like to refer you to the brief by the Ontario Nursing Home Association from last week. I don't think you actually need the brief in front of you. I'll just read you the pertinent section.

They were very concerned about the implementation of proxy comparison if full funding was not provided. They make the statement: "If full funding was provided by the government and the act remained in its current form, the government would be required to add over \$410,000 for every 100-bed home. Across the province, this would result in an expenditure of over \$123 million annually."

They were referring to pay equity only for the care sector—not related to, say, the food sector—in nursing homes and that type of thing. I'm trying to relate that statistic of \$123 million annually for pay equity, as estimated by the Ontario Nursing Home Association, with what you've got in your proxy pay equity costing from the Ministry of Labour, which says for nursing homes the annual total cost would be \$65.1 million, which I assume is for all females in that sector, not just the care component. When you heard these figures last week, did they bear any type of estimate that the Ministry of Labour has done?

1510

**Ms Evans:** Their estimate was based on a \$5-an-hour difference that they identified between nursing homes and municipal homes for the aged. The estimate you have in front of you is a \$2-an-hour difference. We have not asked them where their \$5-an-hour difference came from. The information that we had was that there would be roughly a \$2-an-hour difference.

**Ms Poole:** Again, I guess we get back to the fact that we hear different things and we have no idea of what this costs. The taxpayers one day may wake up, and we'll say, "Surprise, you've saved a lot of money that you thought you were going to have to pay," or, what is the converse, "This is far more expensive."

**Ms Evans:** The macroeconomic-level analysis tends to yield the same result. At an anecdotal level, because pay equity plans are not filed, it's very difficult to come up with exact figures. That's why staying with percentages and generalities will get you there, but sometimes it's not satisfactory because the individual pieces don't always seem to fit together.

**Ms Poole:** I would have thought, for instance, for the Ontario nursing homes, which are comparing themselves to homes for the aged, I wouldn't want to say it's easy, but it would be not as difficult to obtain the statistics for the comparison. That would be one of the easier comparators, I would believe, because there is a fairly direct relationship that one could prove.

If the ballpark varies by twice the amount in one sector, then it does give me some concern over estimates. If, at some later date, the government is going to say, "Well, our

estimates were really wrong; with the deficit we have, we're going to have to cut back in this particular sector in order to pay for pay equity," that will end up in an enormous backlash that will not serve the women of this province well.

That's why I think the figures are fairly important, not because we expect to be able to say within \$1 million what it will cost, but with the uncertain fiscal situation, it could be extremely difficult if the treasury is operating on these assumptions and a very different reality comes out.

**Mr Thomas:** Can I just make a few responses? First of all, I think it's important to recognize that the government's fiscal commitment in the proxy pay equity methodology is 1% a year. So you start with that as, at some point, always being a fiscally bottom-line limiting number. As I said, 1% of \$3 billion is a \$30-million commitment.

People who are in favour of moving towards pay equity would like to do so at a rate more rapid than 1% a year. So whether one can do 3% or 4% or whatever is a reasonable question to ask in light of the need to, at some point, bridge the gap. But there is a bottom line, a legislative minimum of 1%.

Secondly, I've just been asking people around here; this does not purport to be a Ministry of Labour document, and it doesn't have a date on it. So just simply before I end up owning this document, Ms Poole—

**Ms Poole:** I only had two of the four pages reprinted. The front page comes from the Ontario Ministry of Labour. It's signed by Salina Szechtman, workplace practices policy group, cc George Thomson, Deputy Minister of Labour.

**Mr Thomas:** Could I see the document, then?

**Mr Curling:** Pretty authentic, as far as I can tell, anyhow.

**Mr Thomas:** I'd like to check into this further. The information I'm hearing from people around me is that the document, the two-pager, is actually Pay Equity Commission material. I'm not trying to disclaim; I'm just trying to say to you that when you ask me if I can tie this back to all kinds of other Ministry of Labour estimates and whatever, I need to do some thinking about where this document came from and recognize, without trying to avoid your question at all, Ms Poole, that there are many people and a lot of organizations that have a lot of expertise and interest in this area. A lot of them have made different kinds of forecasts based on different assumptions about who the comparator would be and what the proxy organizations would be and what the adjustments would be. So I'd like to, first of all, check a bit more as to where this information came from. I think Ms Evans has given you possibly a large part of the answer to your nursing homes question.

**Ms Poole:** Anyway, if you are checking into it, I would appreciate this. I assumed, because it went out on Ontario Ministry of Labour letterhead and it said, "As discussed, please find attached the data outlining the numbers for the proxy groups," that they were numbers that the Ontario Ministry of Labour was comfortable with, whatever the original source. But it does emphasize again, I think, the inexactitude of the art, not the science.

**Mr Thomas:** It does that and we've acknowledged that.

**Ms Poole:** I'd like to move to one other area. We received a copy of your amendments, government amendments, just before we came in today. There were, quite frankly, a few amendments that I expected to see that are not here. One of them related to a presentation we had last week. It related to the group that was acting as an advocate for disadvantaged women and worked very closely with the Pay Equity Commission. I was looking for a copy of the brief they submitted so I would give you the actual name of the group. They were a legal and advocacy group, something along that line.

**Mr Thomas:** Yes, PEALS.

**Ms Poole:** PEALS, yes, pay equity legal and advocacy—

**Ms Evans:** Pay Equity Advocacy and Legal Services.

**Ms Poole:** One of the things they had suggested was that section 9 of the original act be amended to provide women with some protection against retaliation. They were very concerned, in instances they saw, that in fact there were several barriers to women coming forward with a pay equity plan and to continuing to fight for a pay equity plan. One of the things they said was that if there was an incident of retaliation, the burden of proof was on the employee instead of the employer, and this caused a lot of consternation among their clients. They felt that section 9 needed to be beefed up with an amendment. I wonder if the Ministry of Labour, after that particular presentation, had looked at that issue.

**Mr Thomas:** Yes, we had. There was some interest in doing it. It's consistent, I think, with provisions in the OLRA with respect to how one handles those kinds of problems, Ms Poole. My understanding was that the amendment would be out of order.

1520

**Ms Poole:** It would be out of order—

**Mr Thomas:** Without all-party consent, because that part of the act had not been opened up.

**Ms Poole:** So, because section 9 wasn't one of the sections opened up in Bill 102, this would be ultra vires; it would be outside of the scope.

**Mr Thomas:** That's my understanding.

**Ms Poole:** I have asked legislative counsel to bring forward an amendment for me in that regard, which she has kindly done. So if that answers that question, then tomorrow, when we're in clause-by-clause, I'll ask for all-party consent or we can at least have a debate on whether it can be introduced.

Bill 169: You're both with Ministry of Labour, but—

**Mr Thomas:** Kathy Bouey and Barb Sulzenko are here from Management Board of Cabinet.

**Ms Poole:** I just had a few questions about Bill 169, which hasn't had a whole lot of attention in this committee; the focus has been on Bill 102, the pay equity amendments. Section 2 of Bill 102 provides that the government can determine who is a crown employee for purposes of

pay equity. I think you would probably agree that the purpose of this being in Bill 102 retroactive to December 1991 was to catch situations like the children's aid society and pay equity tribunal decisions. Could you tell me why it was necessary to insert section 2 in Bill 102? In addition to what Bill 169 would do, why was it necessary to have special inclusion in Bill 102?

**Ms Bouey:** I believe the pay equity legislation has its own process for determining who the employer is, so that when it's, say, a small establishment that has linkages to a head office or something like that, there's an ability to look more broadly as to who the employer is. Therefore, if one wanted to be consistent in terms of the government determining who its employees were for the purposes of regular labour relations, it was necessary to make the same amendment, for pay equity purposes, in Bill 102.

**Ms Poole:** Some women have perceived, and certainly a number of our presenters last week perceived, that what section 2 does in Bill 102 is take away pay equity rights that have been bestowed by the pay equity tribunal. So they've said, "On the one hand, parts of Bill 102 give rights to women, and other parts of it take away rights." What would your answer be to those presenters?

**Ms Bouey:** I think, first of all, it's important to remember that the government wanted to take over sole responsibility for determining who it is the employer of, because it is accountable for that. In terms of what it does to pay equity, I think that was a situation the government looked at quite closely, and when new methods were introduced, such as proxy and proportional value—making the government the employer used to be the only route some of these women had to achieve pay equity. By having these new methods in place, these women now have an opportunity to achieve pay equity by other means, and therefore the government's need for its accountability could be dealt with at the same time as these women had access to pay equity.

**Ms Poole:** I believe, when I had a briefing on Bill 169—it was introduced in, what, December 1991, and in my naïveté I thought it was going to come up for second reading any day, so I immediately had a briefing, so this was a long time ago. But, as I recall, one of the statements made by the ministry representatives at that meeting was that pay equity was not to be used as a mechanism of parity.

**Ms Sulzenko:** That's correct. Pay equity is in place to eliminate gender-based discrimination in pay rates, not differentials in pay rates that may be the result of other factors. As Kathy has just said, with the introduction of the new methods, everyone in the public sector now has access to pay equity, the elimination of gender-based pay discrimination, without resort to government-as-employer rulings.

**Ms Poole:** I think Ms Caplan has some supplementaries. I just have one more question along this line. Why was Bill 169 introduced as a companion piece of legislation at the same time as Bill 168? The government House leader said they were to be dealt with together, and even 102 and 169. The debate was held on the two pieces of legislation together. We are in committee in clause-by-clause on them together. Why is Bill 169 tied in to Bill 102?



**Ms Sulzenko:** You'll note that the wording in Bill 102 refers to the Public Service Act and the definition of "crown employer" in the Public Service Act. Of course, that's done through Bill 169, so the wording of the two pieces of legislation linked them together. Under the Pay Equity Act, you can't be a crown employee except as defined in the Public Service Act, and Bill 169 does that. That's why they are linked together.

**Mr Thomas:** The other reason is the answer that Barb gave previously; that is, that on the one hand, one of the bills takes away, if you will, a methodology that some groups were driven to use because there was no other way for them to get pay equity: to try to find a way to become an employee of the OPS for pay equity purposes. At the same time, the other piece of legislation provides other means for those people to achieve pay equity within their own organization or within a schedule proxy organization.

**Mrs Caplan:** My supplementary is that Bill 169 goes beyond the designation of "employee" just for the purpose of pay equity and gives the government, in this legislation, the right to designate who is an employee for any other purpose. That's one of the concerns that has been raised, I think legitimately. That's so broad and open-ended that it is seen in some ways as going far beyond pay equity and having implications in the whole area of labour-management relations between the government of Ontario and the number of union and non-union employees—I think it's almost 90,000—in the Ontario public service now.

I've raised this issue through the discussions at committee. You have the Crown Employees Collective Bargaining Act under review and discussion at this present time. It seems to me a reasonable assumption that Bill 102 could well deal with your definition for the purposes of pay equity, and Bill 169 in fact should better be dealt with as part of the reform of the Crown Employees Collective Bargaining Act. My question is why Bill 169 needs to go as a companion—it does follow on Ms Poole's line of thinking—when you can deal with the definition of employer for the purposes of pay equity, no matter who that employer is, in Bill 102.

**Ms Sulzenko:** Essentially there are two routes through which the government felt its ability to control the size of the public service was being threatened. One was through CECBA, the Crown Employees Collective Bargaining Act, and the other was through the Pay Equity Act, where groups of employees were seeking tribunal declarations that the government was the employee. So it seemed appropriate, in so far as the issue needed to be dealt with in respect of pay equity, needed to be dealt with in respect of CECBA, that they would both be dealt with at the same time, with Bill 169 as a companion to Bill 102.

1530

**Mrs Caplan:** So you agree that Bill 169 goes far beyond the boundaries of pay equity in determining employee status?

**Ms Sulzenko:** Yes, indeed I do. As I said, it addresses two means by which groups of employees have been seeking government-as-employer declarations.

**Mr Thomas:** Could I just respond further to one aspect of the question you raised, Mrs Caplan? I think you also alluded to the potential to affect labour-management relations. I would posit that in fact the intent in Bill 169 is to preserve labour-management relations and not to substantially change them.

I think there is a real danger that the effort to have people who are employed in the broader public sector become, in effect, either pay equity employees or real employees of the government through either CECBA applications or pay equity tribunal cases tends to have the effect of altering the governance structures. Who the employees ultimately work for becomes a really interesting question, and the extent to which the province of Ontario wishes to encourage community-based delivery of services is a real issue behind making sure that the governance systems are preserved and that the Ontario public service is made up of people who are in the Ontario public service as defined by the government and not those who may ultimately get brought in from a wide range of tribunal cases. So you could have a lot of people come in, or not know what their status is, and end up having boards of small organizations not sure what their job is with respect to "employer."

**Mrs Caplan:** I understand the argument, but I would restate the point that you could deal with in Bill 102—which are amendments to the Pay Equity Act for all employers, including the Ontario government—a definition of who designates the employee. I would argue that Bill 169 is not required to do that for the Ontario public service government employer, that Bill 102 would accomplish that. Because you are an employer like any other in the province for the purpose of pay equity, and if you have the statement in Bill 102 that says very clearly that you're not a crown employee unless you've been designated a crown employee, then Bill 169 goes far beyond that.

**Mr Thomas:** You could, but you'd also raise the spectre of the potential for two effective dates. I think the positioning of Bill 169 with Bill 102 is a clear statement that government is intent on deciding who will be employees of the government for whatever purposes, whether it's pay equity or whatever.

**Mrs Caplan:** So really, in Bill 169 you could strike out the words "for pay equity" and you really could just have it "for whatever purposes" and it would be much clearer. The whole intent of Bill 169 is so the government can declare, for whatever reason, who an employee is, and it really has nothing to do with Bill 102, which could do the job for you for pay equity.

**Ms Bouey:** It's true that the effect is broader than pay equity, but I think it would be very confusing if, for example, in Bill 102, under that auspices, it was set out that, say, some sort of local board was the employer and then, at the same time, someone could go through the other process in terms of the more broad government-as-employer issue and find out at that point that the OPS was the employer. It sort of leaves a local board not clear on what it's accountable for, since both things affect compensation. It was quite important from a pay equity standpoint that people know

just what they were responsible for. So that's the clear linkage to pay equity.

**Mrs Caplan:** This is not a question I expect you to answer; it's sort of rhetorical in nature. But it seems to me that Bill 102, which clearly stated the definition of "employer" and the ability of the government to state who is a crown employee, would be sufficient for the purposes of pay equity to allow the government to do that. If Bill 169 were less devious and clear, it could state that, for whatever reason, the government could determine who would be a crown employee, and that too would achieve the objective. I believe that the fact you have linked the two for the purposes of pay equity is so that nobody will notice how broad and sweeping Bill 169 is.

That's a policy decision. It was a decision made by the government. I'm not asking you to comment on it, but it is, at this point in time, important, I think, for the record to note that that's what's accomplished by the two pieces of legislation that have been brought together. I have concerns about the way it's been done and the lack of discussion, in an appropriate forum, for the broader issues to be discussed. Trying to keep this narrowed to pay equity, I think, does not serve public policy development well. I'm not asking for your comment. That was a statement.

**Mr Arnott:** I have a question for the deputy minister with respect to Bill 169. Is there a representative from the Management Board? Okay.

This is a letter I received from a constituent this past week, the Mount Forest Ambulance Service Ltd, signed by James A Borrett, president. I'll read you a portion of the letter that he sent me and I ask you to give consideration to the comment he's made and respond, if you will. I'll read slowly so as not to make it any more difficult. He writes as follows:

"The Ontario government responded to the jurisprudence of the Ontario Public Service Labour Relations Tribunal by passing regulation 181/90 (made April 10, 1990 and filed April 12, 1990). The effect of the regulation was that for the purposes of subsection 1(2) of the Crown Employees Collective Bargaining Act, the government designated as crown agents 21 privately owned ambulance services where the Ontario Public Service Employees Union had bargaining rights.

"Subsequent to this at 18 December 1991, Bill 169 was introduced and received first reading in the House. Bill 169 proposes to limit who may become crown employees, public servants and civil servants to those receiving an express appointment and to make only employees of designated crown agents eligible to be crown employees.

"In the interim, OPSEU has made application for representation rights for several groups. These are listed in appendix A"—and he has listed them; they are all private ambulance operators—"and include both private ambulance services, municipalities and an air escort agency. However, not all of these groups will receive equal treatment under Bill 169. Some of this group will receive preferential treatment in that they will not be swept up automatically as crown agents by virtue of the date at which OPSEU made its application for representation rights. The rest appear to

be liable for inclusion as crown agents by virtue of the OPSEU application date, which is clearly to disadvantage that latter group.

"It is my belief that government must not only act fairly but appear to act fairly in this matter. In this instant situation my specific request is that Bill 169 be amended to reflect an equal and impartial treatment for all groups which remained as private operators after regulation 181/90 was passed. To do less would be to penalize these groups as a function of governmental procedure and slower than optimal legislative action. Clearly this is discriminatory and unfair and certainly not a function of the Legislature."

**Ms Bouey:** Could I just clarify? The author is proposing that the legislation be further retroactive, to the point of that regulation?

**Mr Arnott:** I can show you the letter.

**Ms Bouey:** I think the difficulty of doing what is proposed here is basically that it would be retroactive to the date before the bill was tabled. I gather that is not a normally acceptable procedure, for obvious reasons.

In terms of the ambulance sector, it's been a sector where there have been a number of these crown employer designations over a period. As I understand it, the Ministry of Health commissioned a report by Gene Swimmer in terms of the appropriate structure for the future of the ambulance industry. That report has been received. They're now reviewing that to determine the appropriate course of action. I would presume that decisions as to how to sort all this out would be made in the context of that review.

1540

**Mr Arnott:** But Mr Borrett's point, I guess, is that there are two groups that are not receiving equal treatment as a result of Bill 169. Would you say that's incorrect?

**Ms Bouey:** I think it is probably correct that they are not receiving equal treatment. I think that happens inevitably whenever you pick a date. If the date had been the date of proclamation of the legislation, we would still have that problem. It's a question of making the government's intent clear and trying to minimize those kinds of problems.

**Mr Arnott:** Thank you for your answer.

**The Acting Chair:** Further questions?

**Ms Poole:** I'm coming to the end of my questions, you will be relieved to know.

I had a question about the proxy model that is used in Bill 102, and actually that was one area in which I was surprised that the government did not have a few amendments. There was considerable criticism of the language, for instance, and the terminology used in the proxy model. There's also criticism of the fact that female jobs were compared to female jobs, as opposed to female jobs being compared to male jobs. Many presenters argued that this is against the spirit of pay equity, which by the very way it's set up is to eliminate gender discrimination on the basis of compensation by comparing female and male jobs.

It appeared from what we learned when the minister and ministry staff came before the committee the week before last that there have been two proxy models suggested,



and it is the second model that is being brought into Bill 102. I'm assuming from comments made by presenters, that there wasn't a wide-based consultation with them about the fact the government intended to go with comparing female jobs to female jobs.

I'm making these assumptions because I wasn't part of the process, so I don't know what developed. Could you tell me why it was that the government went with comparing female jobs to female jobs?

**Mr Thomas:** First of all, I think there was a fair amount of consultation on the second model. The reason for going between female jobs—first of all, one has to recognize that the female job in the proxy organization, the one you're comparing to, is a female job that's already received, either actually or notionally, its pay equity adjustment. So it's already according to the proxy establishment's pay equity plan being moved up to pay equity. It has already been compared to a male comparator and has received an adjustment to bring it in line. Although technically it is female to female, practically it's female to a male-adjusted female class.

The reason I would be concerned about going into a system that is female to male job class in the proxy organization is that you have the potential to set up different payouts for a female job in the seeking organization and the female job in the proxy organization, both of which are of the same value, because there might be several male jobs in the proxy organization that would be at different wage rates, but all be at the same value.

If the proxy organization was required to send over to the seeking one all of the male job class information, and the seeking organization didn't choose the same male one that the proxy one chose, you would have the potential for two different payouts in two different establishments, using each other in effect for the same value job. I think that might put the plan in the proxy organization up for attack. Furthermore, some of the male jobs may not have been used. They may not have been part of the pay equity process, so you might then be requiring the proxy organization to do a fair amount of work that it hadn't planned on doing, because it has already finished its pay equity plan.

So there were a number of methodological reasons, I think, Ms Poole, that caused us to conclude that even though the optics may not be perfect, the fact of the matter is you are comparing female to, in effect, the male-adjusted rate.

**Ms Poole:** Instead of saying that there hadn't been a great deal of consultation about the second method, it probably would have been more accurate to say there wasn't a great deal of consensus that the second method, comparing female jobs to female jobs, was the better way to go.

It seems that one of the objections the presenters have had relates to the integrity of the original plan. I think that the Ontario Association of Interval and Transition Houses brought forward that particular point. They were concerned that if there was some problem with the original plan, then this would damage their particular pay equity plan. So I guess it goes down to integrity of the process.

**Mr Thomas:** That's the tradeoff, isn't it? In the model that we're talking about, you in effect take the proxy's pay equity plan with its glitches if they're there. The tradeoff, though, I suggest is far worse. The alternative is to end up going into a proxy organization's already negotiated pay equity plan—posted, finalized, being implemented—and you end up having an outsider organization say, "We've been able to construct a better pay equity plan using the same data that the proxy organization used to construct its."

That strikes me as a formula for complaints. That strikes me as absolute. I can predict with certainty that there will be complaints when you have two different female job classes at the same value in two different organizations that thought they were kind of using the same pay equity plan with different payouts.

That's the major danger we're trying to avoid and we do avoid by doing the female to female. But I do recognize that if there are glitches in the proxy's plan, the seeking organization takes it with the glitches. That's the limitation.

**Ms Poole:** I guess the other question I would have along this particular line of questioning—I know I said it was the last question but it was really the last line of questioning I had—relates to the proxy. There are a number of groups and individuals who've indicated that they feel this is going to be a fairly complicated method to implement. It does involve going outside with cross-employer comparisons, and they find the language confusing and they see bureaucratic difficulties in implementing it.

I'm wondering why the government didn't simply announce a wage enhancement grant to all these female job ghettos, if I may call them that, which were excluded from the original legislation. I asked this question to several of the presenters, including the Ontario Coalition for Better Child Care. They weren't in favour of the wage enhancement as an alternative because they felt it was a matter of equity and they felt it was a matter of pay equity, so they didn't want to be given a handout. Mind you, I also got the impression that if they were handed a cheque tomorrow, they would gladly take it, but in their particular instance they felt that a method of pay equity would be more palatable.

I have some sympathy for their point, that it is a matter of justice and equity, but I'm just wondering if we are going to set up a system that, first of all, will be very costly; secondly, very complex; thirdly, difficult for the proxy groups to implement; and whether a wage enhancement program by regulation would not be a more controlled way of doing this without all the bureaucracy and just say, "These are the identified groups where their wages are very clearly below what they should be, and this is going to be the plan we have to get those wages up to a reasonable amount," similar to what was done in New Directions in 1987 with the direct operating grant for child care workers, and what has been continued with the wage enhancement grants under the NDP government, that type of thing, not only for the child care sector or some of the social service agencies but across the broad spectrum.

From the perspective of the Ministry of Labour, what reason was there to go to the proxy method as opposed to a wage enhancement scheme?

**Mr Thomas:** First of all, perhaps facetiously, I could say that in our scheme they're getting both. They're getting the down payment program that gives them the adjustment this year and then they move into the rights-based model.

1550

**Ms Poole:** Yes, but that's only because of the heat over the delay. It's called a government buyoff, but we won't get into the partisan part of that.

**Mr Thomas:** But that's only the first part of my answer too.

**Ms Poole:** Yes. Good; there had to be more.

**Mr Thomas:** Yes, I thought there should be.

If there's one thing I've learned in the last couple of years of dealing with pay equity, it is the notion of how important a rights-based system seems to be for people who are in the system. If there's one thing we heard in our consultations from virtually everybody, it was the importance of enshrining a rights-based system so that people would have (a) a definition of pay equity, (b) a certainty they could achieve pay equity with the appropriate organization or the appropriate group, and (c) a process of determining that within the workplace, between the workplace parties.

That's been the driving force behind trying to come up with schemes that will allow the 420,000 women who are shut out of pay equity in a job-to-job system to have access to the other two methods. My sense is that there was tremendous pressure and support from the consultations for a rights-based system that would extend pay equity into all females' places. So my sense is that if there's one thing I have learned in the last couple of years, watching this and being part of this, it is the strength of the commitment people have out there to wanting a rights-based system.

Yes, it is not easy to construct one. I believe the commission will be able to make it as easy as one can make it. But I think that was the tradeoff people recognized they were paying in order to get a legislative, rights-based system that isn't going to ultimately result in ad hoc increases here and there, under the guise of a down payment program, an enhancement program or a direct operating grant.

**Ms Poole:** I guess it is a matter of tradeoffs, because I'm a pragmatist and I say the end result is the bottom line. In the bottom line, if you can provide something more easily without the bureaucracy, without the complexity, without the organization involved, having to go through hoops to get it, and yet having the government phase it in over a number of years so that women see at the end of the line—and not waiting 40 years but maybe a time line of 10 years—they would realize certain levels without having gone through hoops to get it.

**Mr Thomas:** I see your argument. I just respond with the strength with which people out there have been arguing for a rights-based system.

**Ms Poole:** We'll agree to disagree on how the end result is achieved. Thank you very much. Those are my questions at this time.

**Mr Arnott:** I just want to sum up, I guess, this afternoon and say that I agree with Ms Poole's final comment most wholeheartedly, that in terms of—

**Ms Poole:** What's wrong with it?

**Mr Arnott:** No, I agree with it entirely. In terms of the exercise we've gone through to try to achieve what we call pay equity, it has been exceedingly bureaucratic and exceedingly complex. People don't understand it. If we, as a society or as a government, pointed to a problem and said that certain job classes are underpaid, it would have been far simpler, if the government had the will to do it, to increase grants or transfers to the agencies they wanted to increase the job salaries or wages. It would have been far simpler.

I guess when we look at the bottom line and the deficit in Ontario, that has to come into the equation as well. Yes, I agree with the deputy minister that these groups that have come forward in the week we had public hearings were strongly supportive of a rights-based system. But the reality is that the fiscal situation of the province has to come in as a consideration. Just because we haven't heard from the taxpayers on this, I think it's clear that they may be concerned.

For example, with the motion that I put forward this afternoon, which was defeated by the majority of the government members on the committee, with the exception of the parliamentary assistant to the Minister of Labour, it appears that people don't want to even know what pay equity is going to cost. People don't want to see an aggregate figure. They don't want to know it.

**Mr Wiseman:** That's a misinterpretation of the vote.

**Mr Arnott:** That's the way I interpret it. I'd like to see an aggregate figure.

**Mr Wiseman:** You can misinterpret it any way you like, but that's a misinterpretation of the vote.

**Mr Arnott:** If the government members are supportive of the Ministry of Labour showing me an aggregate figure of what pay equity has cost since 1986, I'd still like to see it.

**Mr Wiseman:** That's still a misinterpretation of the vote.

**The Acting Chair:** Mr Wiseman, Mr Arnott has the floor.

**Mr Arnott:** Thank you, Madam Chair.

**Ms Poole:** Madam Chair, may I make one other request?

**The Acting Chair:** Yes, Ms Poole.

**Ms Poole:** I just ask that notwithstanding any votes, if there are areas in which the Ministry of Labour or Treasury or Management Board can provide us with some figures, as requested in the original motion, we would very much appreciate receiving that information.

**The Acting Chair:** Are there any other questions? Seeing none, I adjourn this committee until 10 o'clock tomorrow morning.

The committee adjourned at 1557.





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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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- Wessinger, Paul (Simcoe Centre ND)
- Winninger, David (London South/-Sud ND)

\*In attendance / présents

### **Substitutions present / Membres remplaçants présents:**

Arnott, Ted (Wellington PC) for Mr Runciman  
Caplan, Elinor (Oriole L) for Mr Chiarelli  
Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick  
Lessard, Wayne (Windsor-Walkerville ND) for Mr Morrow  
Mathyssen, Irene (Middlesex ND) for Ms Carter  
Murdock, Sharon (Sudbury ND) for Mr Wessinger  
Poole, Dianne (Eglinton L) for Mr Mahoney  
Wiseman, Jim (Durham West/-Ouest ND) for Mr Winninger

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Hopkins, Laura, legislative counsel



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## Legislative Assembly of Ontario

Second Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 2 February 1993

### Standing committee on administration of justice

Pay Equity Amendment Act, 1993  
Public Service Statute Law  
Amendment Act, 1993

Chair: Mike Cooper  
Clerk: Lisa Freedman

Published by the Legislative Assembly of Ontario  
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## Assemblée législative de l'Ontario

Deuxième intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mardi 2 février 1993

### Comité permanent de l'administration de la justice

Loi de 1993 modifiant la Loi  
sur l'équité salariale  
Loi de 1993 modifiant des  
lois en ce qui concerne  
la fonction publique

Président : Mike Cooper  
Greffière : Lisa Freedman

Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 2 February 1993

The committee met at 1023 in room 228.

### PAY EQUITY AMENDMENT ACT, 1993

#### LOI DE 1993 MODIFIANT LA LOI SUR L'ÉQUITÉ SALARIALE

### PUBLIC SERVICE STATUTE LAW AMENDMENT ACT, 1993

#### LOI DE 1993 MODIFIANT DES LOIS EN CE QUI CONCERNE LA FONCTION PUBLIQUE

Consideration of Bill 102, An Act to amend the Pay Equity Act / Loi modifiant la Loi sur l'équité salariale, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act / Loi modifiant la Loi sur la fonction publique et la Loi sur la négociation collective des employés de la Couronne.

**The Chair (Mr Mike Cooper):** I call this meeting of the standing committee on administration of justice to order. We're continuing with our discussion on Bill 102, An Act to amend the Pay Equity Act, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act.

Good morning, everybody. First, are there any questions, comments or amendments? Ms Poole.

**Ms Dianne Poole (Eglinton):** The Liberal caucus has tabled a number of amendments with the clerk of the committee. Legislative counsel has kindly prepared three replacement amendments for subsections 21.10(1), (2) and (4) of the bill. These three replacement motions actually just separate the one replacement motion from yesterday. We have one further new amendment; the clerk is making copies and will be distributing it. It's an amendment to subsection 16(8) of the bill. I think the clerk has a copy of all the relevant material.

**The Chair:** Thank you, Ms Poole. Mr Arnott.

**Mr Ted Arnott (Wellington):** Our caucus has one amendment we would be moving today.

**The Chair:** Thank you. Ms Murdock.

**Ms Sharon Murdock (Sudbury):** I believe the clerk has all of our amendments and replacement amendments.

**The Chair:** Opening statements: Ms Murdock, do you have an opening statement?

**Ms Murdock:** No. The minister spoke eloquently on opening day.

**The Chair:** Thank you very much. Ms Poole.

**Ms Poole:** Mr Chair, as we go into the pay equity clause by clause, there are certainly a number of concerns our caucus has.

When this legislation was introduced, it purported to be a major advancement for women. It purported to introduce two new methods of pay equity comparison which would

advantage women and be a major step forward. However, on close examination of the legislation, it becomes very clear that there are a number of areas in which this legislation is in fact a step backwards for women. It is legislation which denies and takes away rights which women have under the existing legislation passed by the Liberal government in 1987. There are several areas in which this is true.

The first is the delay in achievement in the public sector. From January 1, 1995, as established in the Pay Equity Act, it has been delayed to January 1, 1998, so women in the public sector will have their achievement of pay equity delayed by three years.

The second major area is the area of maintenance. Very clearly in the Pay Equity Act, 1987, it's set out that once pay equity is achieved, it must be maintained. I think this makes all sorts of good sense; otherwise, pay equity would just be a joke. The employer could achieve it and then very shortly thereafter start to dismantle it. So this protection of maintaining the pay equity plan and the integrity of the pay equity plan was extremely important. What the government has done is to introduce a provision in this legislation that would allow it to put forward regulations to limit the maintenance provision.

This is clearly unacceptable. In both the instances I've just outlined, presenter after presenter came to this committee; these were presenters who were very favourably disposed towards the current NDP government, yet they reacted with shock and amazement that the NDP would bring in these provisions. One must ask the reason why.

The government has claimed that it is a matter of fiscal responsibility, that because of the extraordinary deficit this government has incurred, it is necessary to take cost-saving steps. But I submit to this committee that what the government has done is to rob Peter to pay Paul; or in this case, maybe they've robbed Petra to pay Paula. In order to pay for pay equity in the broader public sector by the proxy method, this government has decided that it is going to take away from the public sector women who have already achieved rights under pay equity. I, quite frankly, do not think that's a tradeoff that women are prepared to accept.

The third major area in which the Liberal caucus has concern with this legislation is the area of the proxy method. This was introduced to bring relief to some 80,000 women in female-dominated sectors where they currently have no recourse under the legislation to achieve pay equity. In fact, these are women who could not take advantage of the proportional method because it does not apply to their sector as well. So we are in sympathy for the need to do something for the women in female-dominated sectors, but we disagree with the way in which the government has gone about it.

When the Pay Equity Act, 1987, was introduced and passed, the Liberal government made a commitment to look at other alternatives and other ways in which women not covered by the act could be covered by the act. One of the ways suggested was proportional; the other was proxy.

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In March 1990, the Liberal government announced that it intended to proceed with proxy, which allowed indirect comparisons between female and male jobs. This left the women who were in solely female-dominated sectors without a recourse. So the suggestion was that it be done through a series of wage enhancements so that these female ghettos would have relief.

But it would be done in a way that, first of all, was not complex. Certainly, presenter after presenter came before this committee and said the proxy method as proposed by the government is extremely complex, hard to understand and confusing.

Second, it would save the cost of implementing this plan. The government has made it clear that it has not targeted special funds that would pay the cost of implementing the proxy method.

Third, you get to the cost of the proxy method itself. It's completely uncontrollable and is not a fiscally proper way for a government to act.

What the women of this province who are in female-dominated sectors need is some assurance from the government that it would bring in measures for these wage enhancements. It may take a number of years, be implemented year after year, but the timetables would be set out, the sectors would be identified, and these women would have the relief they require, without this incredible bureaucracy which the proxy method's going to engender.

So it is in these three areas in particular that we have concerns. We also have concerns with the fact that we are getting mixed messages about the costing of this scheme, because any government that does not consider the bottom-line cost in this day and age would be totally irresponsible. We have to look at that. The Ministry of Labour, to be fair, yesterday did answer a number of questions concerning cost, but the bottom line is that I don't think the government really did a thorough analysis of what the bottom line was going to be. I think there are going to be a number of unexplained and unexpected surprises down the road which may end up by this government or a subsequent government having to say, "This is totally out of control."

I was somewhat hopeful that the government would have addressed some of these concerns. I can't see how they can hold their head up high and say they are acting on behalf of women when they bring in this type of legislation. There was a very mixed reaction from many of the presenters.

I was appalled that the only amendments put forward by the government were in the nature of housekeeping, that it really did not take a second look at what it was doing and the ramifications, notwithstanding the fact that every single presenter who came to this committee—as I said before, many of whom were very supportive of this

particular government—was harshly critical of a number of the aspects of the legislation which I've outlined today.

So I'm hoping that when the amendments are moved by the Liberal caucus in committee today in clause-by-clause, the government may reconsider its position. If it doesn't, then it has really betrayed the women in this province and taken us a step backward, by denying women rights they already had under existing legislation.

**The Chair:** Mr Arnott, opening statements?

**Mr Arnott:** The only opening statement I have is with respect to an explanation of our amendments, so I'll do it at that time.

**The Chair:** Thank you very much. We'll proceed now to clause-by-clause on Bill 102.

Shall sections 1 to 5 carry? Any questions?

**Ms Poole:** I have a question relating to subsection 1(3), which describes the proportional value method and the proxy method of comparison. One of the areas in which I was very surprised that the government did not introduce amendments related to the language in the proxy comparison method, which I think universally was criticized during the presentations last week as being very confusing and complex and not describing what they appropriately felt the method should describe. I was wondering if we could have some explanation from the parliamentary assistant as to why they rejected the arguments put forward by the presenters.

**Ms Murdock:** In terms of the language that was used in subsection 1(3), we felt basically that it wasn't unanimous and there was some discussion of the fact that over the past two years—this has been discussed in all the consultations—the people who implement it significantly are used to those words and that it was going to cause an awful lot more confusion to change it to the language that some of the groups had suggested.

**Ms Poole:** I would just correct one thing. I don't think it was some of the groups; I think it was universal. I don't know of one group that said it agreed with the government's language.

**Ms Murdock:** Correct me if I'm wrong, but you're talking about using, instead of the word "proxy," "cross-establishment" and so on. CUPE didn't, as I recall, and some groups didn't mention it at all; they didn't refer to it. I admit there were a number of groups that had a particular interest in it that did say they thought it should be changed, but it would have involved re-explaining to an awful lot of groups that are already implementing some of these plans, some of which have already gotten into proportional value, and changing that whole language and getting that whole thing changed. We felt it was confusing enough as it is without making it even more confusing. That was our rationale.

**Ms Poole:** Mr Chair, just as a correction: The parliamentary assistant mentioned the fact that CUPE—

**Ms Murdock:** I think it was CUPE.

**Ms Poole:** —did not propose changing the language. I have the CUPE brief in front of me. On page 2 it says very



clearly, "We propose replacing the term 'proxy method' with 'cross-establishment method'" etc.

**Ms Murdock:** You're right. I was wrong. It wasn't CUPE; it was ONA. I've just been advised by staff that it was ONA.

**Ms Poole:** ONA was the presenter that didn't like any part of this legislation and wanted us to vote against it. In fact, I asked the question, should we support this legislation with the shortfalls you have described? ONA said very clearly that this was regressive legislation and should be withdrawn.

**Ms Murdock:** I thought we were speaking in relation to language.

**Ms Poole:** We were, but ONA in no way said it supported the language.

**Mr Cameron Jackson (Burlington South):** Part of that language you didn't understand.

**Mrs Elinor Caplan (Oriole):** I find the answers from the parliamentary assistant absolutely shocking. I've been sitting in this committee over a number of weeks. It's clear that the government, and the parliamentary assistant in particular, did not listen to any of the presentations. Over and over again, we were asked for simplification of language. It was an ongoing and common request that everyone came in with. The response that the reason the government didn't do it is because a union—some, it's not quite sure which one—didn't ask for it or didn't like it, and trying to justify its position by suggesting that some of the presenters who said, "Scrap the whole bill," didn't ask for it, is absolutely a shocking omission of (1) not listening and (2) suggesting that these hearings entirely were a sham.

On behalf of the people who came forward and presented excellent briefs, I really want to say how disappointed I am that the government obviously didn't listen to them at all. I'm shocked.

**Ms Murdock:** The opposition may not like my answers, but to accuse me of not having listened is, I think, reprehensible because the fact is that I have listened. We don't agree with that change. In fact, on the ONA submission, if you will recall, and you can check Hansard, I specifically asked them whether they did or did not feel that the language should be changed. They specifically said—

**Mrs Caplan:** They said the bill should be scrapped.

**Ms Murdock:** Just a moment, please, Mrs Caplan. They specifically said that the language in the bill was common usage and that they didn't feel it should be changed, that changing it would cause confusion. After working on this for two years, our belief is that this is exactly the case, and we're not about to change it to cause even more confusion.

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**Mrs Caplan:** I would point out to the parliamentary assistant that if you're going to listen to ONA, you should listen to everything it said. They said: "Don't do what you're doing. Withdraw this bill." They didn't alone say, "Don't change the language." They said: "Don't change

anything. What's in place is working just fine. This legislation is going to be a big step backwards for women." They said, "This legislation is regressive." They said, "This legislation should not go forward." It was within that context that they said, "Don't change the language." To put those kinds of words in ONA's mouth totally misrepresents what you were told by the Ontario Nurses' Association.

**Ms Murdock:** We're speaking to subsection 1(3), I believe, and so I'm directing my comments directly to that. I am not getting into the entire concept of the ONA presentation, which would mean, if we listen to ONA, that all of those women out there who would be affected under proportional value and under proxy would not get any pay equity payment at all. If that's what ONA thinks is fair, then so be it.

**The Chair:** Further comments?

**Mr Alvin Curling (Scarborough North):** Am I getting from the parliamentary assistant that now, because ONA has criticized the bill in a very constructive way, she's saying, "Tough on you, ONA, because there are other women to be looked after"? I just want a clarification on that, because I'm hearing that ONA had made a criticism.

My colleague also pointed out to the parliamentary assistant that this is something that should be listened to rather carefully. It's a democratic process. This party has prided itself on democratic process. Listen to people as they make their presentations. I just want to understand from the parliamentary assistant, will you be taking any advice from the presentation ONA has made here? Will you be responding to any sector of their presentation?

**Ms Murdock:** I obviously was listening to them under subsection 1(3). In regard to throwing out all the pay equity? No, I'm not willing to do that.

**Mrs Caplan:** That's not what they said. That is gross misrepresentation.

**The Chair:** Further comments? Seeing no further comments or questions, all those in favour of section—

**Ms Poole:** Mr Chair, was there any agreement that we would deal with five sections at a time?

**The Chair:** Generally, when there are no amendments to a section, we go right through the whole list until we come to an amendment on a section. Would you like to do a section at a time? I'm in the hands of the committee.

**Ms Murdock:** It doesn't matter.

**Ms Poole:** I just find that when we're going through it so quickly, it's difficult to follow when you're trying to look at five sections and ask questions on five sections at one time.

**The Chair:** All right, then we'll do them one at a time.

Shall section 1 carry? All those in favour? Opposed? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? All those in favour? Opposed? Carried.

Shall section 4 carry? Carried.

Shall section 5 carry? Carried.

On section 6, there is a Liberal motion.

**Ms Poole:** We have an amendment to this section which refers to the fact that the government no longer wishes to have its plans maintained.

I move that section 6 of the bill be struck out.

**The Chair:** Ruling from the Chair: This motion is out of order. What you would have to do is vote against the section. You can't move to strike out a section. You'd have to vote against the whole section. Comments?

**Ms Poole:** I would like an explanation from the parliamentary assistant as to why the government chose to weaken the rights of women under the Pay Equity Act, 1987, by limiting the maintenance provision, because it is very clear that section 6 will allow the government to prescribe regulations which would limit the maintenance of pay equity. Could I please have an explanation of why the government would take away the rights of women and do this?

**Ms Murdock:** I'll respond to why we've included section 6, and that is basically that many of the establishments have now gone beyond the stage of achieving pay equity and are dealing with maintenance now. The act provides no guidance to the workplace parties for addressing maintenance situations that are out of the ordinary. We're not taking away, I don't think, from the section 7 requirement to maintain pay equity. But it means that a wage gap will not be allowed to re-emerge between female and male job classes.

I think that in the vast majority of cases the maintenance is not complicated or controversial and no legislative assistance is required to guide the workplace parties for the appropriate action they would have to take. I think there are unusual situations, or there potentially could be unusual situations that would require some kind of guidance situation, and the regulation-making authority is intended to do that. It could be used, for example, at some point to define payment periods if an employer were to find that he or she couldn't make a final payment in a final year.

**Ms Poole:** Let's be very clear what this section says. Section 6 of the bill says that the government may prescribe limitations, so I don't know how the parliamentary assistant can say this isn't taking away rights that women had under the existing act.

**Ms Murdock:** I guess I'd have to ask you in what circumstances you would see it being used.

**Mrs Caplan:** You're the government.

**Ms Poole:** Excuse me.

Interjections.

**The Chair:** Order.

**Ms Poole:** Mr Chair, through you, I would say to the parliamentary assistant that for her to be asking members of the opposition, who have absolutely no control over this legislation, that question is quite outrageous. The problem is—

**Ms Murdock:** There is no intention to take—

**Ms Poole:** The problem is that we do not know under what circumstances you would use it. The women's groups that came before us the week before last do not know in

what circumstances the government would use it. That is the whole point. With regulations it can be an order in council like that. It can damage the integrity of a plan. It can damage the rights of women, and they have no recourse.

**Ms Murdock:** You're operating on the supposition that any government, regardless of which government it is, would be just indiscriminately making regulations whenever it felt like it. We've explained this, and I think the Minister explained it, as did the deputy, and I'll explain it again. The intent, of course, is only to use it in unusual circumstances. There is no intent to limit pay equity for women who deserve it. There will be unusual circumstances, but we don't know what they will be, necessarily, and this covers that eventuality.

**Mr Jackson:** On that point, then, perhaps it's helpful if we ask someone from legal counsel to give an example which may have given rise to them recommending to the government—I respect the parliamentary assistant's response but it's limited and it's unsatisfactory. I know certain examples. I know that women who work in the day care field have had a government announce they were eligible and then withdraw their eligibility from pay equity. So there are examples which give cause to the concern raised by Ms Poole. This would not be in the legislation if there weren't some circumstance which legal counsel has advised may give rise to its need. Could legal counsel respond? Although a political answer was invited, a legal response is helpful.

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**Ms Murdock:** Catherine Evans, legal counsel with the Ministry of Labour.

**Ms Catherine Evans:** I'm a policy adviser, in fact, but also—

**Ms Murdock:** But also a lawyer.

**Ms Evans:** I'm a lawyer, yes.

There have been maintenance awards in a variety of plans. Maintenance in the act is something which is accrued immediately. The act generally provides for the achievement of pay equity on a phased-in basis, 1% of payroll a year, or until the deadline arises. Maintenance has no such phase-in. In a situation where there's potentially a large maintenance award, this would all become due in one year. In such a situation—which is an unusual situation, to be sure—it may be more appropriate for a limit to be placed on that maintenance right, such that it also becomes phased in as a matter of 1% a year, for example, if it is that large. It's a situation designed to prevent economic hardship.

**Mr Jackson:** And supplementary to that, this would be done in regulation at some future point, but this is the enabling clause?

**Ms Evans:** Yes.

**Mr Jackson:** Great. I'm satisfied with that answer.

**Mrs Caplan:** Now that I understand it, what this section is about is building into the act an incentive not to maintain pay equity. As I understand it, there's a requirement that pay equity be achieved and maintained; the maintenance awards would not come unless you in fact had not maintained pay equity. Then, rather than having someone who had allowed the plan to deteriorate—to right



that, what you're going to do is build in an incentive that would extend the time for pay equity to be achieved again.

**Ms Evans:** This provision would not affect the normal course of maintenance which arises through annual wage increases; if everyone in the establishment were given a wage increase of \$500 or 4% or whatever it is, this provision is not designed to affect that at all. That would continue, and an employer is obligated to maintain pay equity in the normal course of events.

This deals with unusual situations. Where an unusual increase is given to a particular male comparator, for example, that would have an effect out of the ordinary course of wage increases on female comparator jobs, it could result in very large increases.

**Mrs Caplan:** I don't see that that's what this says, because it refers to maintenance increases. As I understand it, a plan is developed and the payouts are required over a phase-in of 1% per year. After that's been done, there's an obligation to maintain. I don't understand, from your explanation—give me an example of what sort of unusual maintenance award would come at that point in time. Certainly, a maintenance award comes after there has been a deterioration or a backsliding from the achievement of pay equity.

**Ms Evans:** If you have a situation in an establishment where there's more than one pay equity plan, which occurs where there is more than one bargaining unit, for example, if you have comparisons across the bargaining unit, which is not unusual, you can have a situation where one female job class in a bargaining unit of, say, 15 female job classes, has a comparison to a male job class in a different bargaining unit.

If the collective agreement expiry dates are different, such that the male job class comparator has an earlier expiry date and so gains a wage increase perhaps in advance of when the normal wage increases would arise for the female bargaining unit, the Pay Equity Act would operate to move that increase from the male job class immediately on to the female job class. The female job class then would leap ahead, so to speak, of her colleagues'. It may be more appropriate for that increase to be deferred until the general collective agreement is negotiated for the female job classes, at which time that maintenance adjustment would therefore accrue to the female job class. That's one situation.

**Mrs Caplan:** As women understand this, I think they will be surprised that this was included, because I think that those who understand it will see it as we do, which is the beginning of the erosion of the commitment to pay equity. That this was begun by an NDP government is appalling.

**Ms Poole:** I'm not sure the parliamentary assistant understands the weight of this particular section. This section doesn't say "in certain circumstances" and outline certain circumstances. It is very broad, and government could use it for its own purposes.

What the parliamentary assistant is asking us to do is "Trust us." Well, I'm sorry. You ask the children's aid

society workers, after section 2 is in this act, if they trust government. I'm sorry. You ask all those women in the public sector who were promised that they would have pay equity achieved by January 1, 1995, if, when they look at this legislation, they trust government. The fact is, people do not trust government, and every day I see more and more reasons why people feel that way.

You're asking the women of this province to say, "Oh, yes, you've assured us that it will only be in unusual circumstances." Are you telling me you're going to bring a regulation for every unusual circumstance? How can you possibly give the assurance that if there is a plan achieved in, for instance, the public sector, which the government has to pay for, and the government doesn't like the maintenance award because it's too high and it can't fit it in its fiscal plans, there will be a regulation regarding that?

You can't assure it, because you have given immense power through section 6 to the regulations; regulations which will never be debated before committee, regulations which will never go into the Legislature, regulations which can in the dead of night—except I'm sure the government doesn't work in the dead of night—be changed at the stroke of a pen, without any recourse.

I'm sorry. I don't care if there are unusual circumstances. If there are, then you draft legislation to cover the unusual circumstances. You do not put in a general provision which could be very damaging to women in this province who are trying to achieve and maintain pay equity.

We will, as a Liberal caucus, vote against it. Mr Chair, I'm asking for a recorded vote on this, because I want to see each of those government members vote against the maintenance of pay equity. That's what they're doing with this section.

**Mrs Caplan:** That's right. This is the beginning of the end.

**The Chair:** Thank you. When we get to the vote, it will be recorded.

**Mr Jackson:** Perhaps it's the unfortunate circumstance of Ms Poole never having made cabinet, but her two colleagues who accompany her today have. Clearly, by the debate I've just heard—which it was: a debate—there's some frustration shared by Ms Poole but not by her colleagues, since they fully understand the ramifications of the relationship between regulations and enabling legislation.

**Mr Curling:** Don't speak for me.

**Ms Poole:** Are you speaking out of frustration because you didn't make cabinet, Mr Jackson?

**Mr Jackson:** I'm a lot more patient than you are obviously showing at the moment. But I would like to call the question, because this is degenerating into a debate, and it's an unnecessary debate.

**Ms Poole:** Mr Jackson, what an appalling thing to happen in clause-by-clause.

**Mr Jackson:** Fair ball. You've made your point, Ms Poole. How long did you want to flog it?

**The Chair:** Are you moving closure, Mr Jackson?

**Mr Jackson:** Yes. I tried yesterday; I'm going to try today. Call the question.

1100

**The Chair:** All in favour of the closure motion? Carried.

On the question, on section 6, shall section 6 carry? Recorded vote. All in favour?

**Ayes**

Akande, Klopp, Malkowski, Mathysen, Murdock (Sudbury), Wiseman.

**The Chair:** Opposed?

**Nays**

Caplan, Curling, Jackson, Poole.

**The Chair:** Motion carried. On section 7, do we have a PC motion?

**Mr Jackson:** I move that section 7 of the bill be amended by adding the following subsection before subsection (1):

“(0.1) Subclauses 13(2)(e)(iv) and (v) of the act are repealed and the following substituted:

“(iv) the 1st day of January, 1998, in respect of employers in the private sector who have at least 10 but fewer than 100 employees on the effective date and who have posted a notice under section 20.”

**The Chair:** Mr Jackson, this motion is out of order because subsection 13(2) is not open. Do you have arguments why it should be in order?

**Mr Arnott:** I would move unanimous consent that we at least be allowed to make our presentation on this amendment.

**The Chair:** Do we have unanimous consent? No, we don't.

A Liberal motion? As in the previous Liberal motion, this one is out of order, to strike out a whole section. What you'd have to do is vote against the section. On section 7, Ms Poole?

**Ms Poole:** I have a question, Mr Chair. Do I not have to introduce the amendment before you rule it out of order?

**The Chair:** You should move it first. You're correct.

**Ms Poole:** I'm sorry, but we have to take our small victories where we get them. Section 7 of the bill is the one relating to the delay of pay equity by three years in the public sector.

I move that section 7 of the bill be struck out.

**The Chair:** As I said previously, this would be out of order. What you have to do is vote against the whole section. You can't strike out a section. Comments on section 7? Ms Poole.

**Ms Poole:** This is the section which changes the legislation passed in 1987, the Pay Equity Act, which set out a timetable by which pay equity was to be achieved in the public sector and in the private sector. It also set out provisions for the posting of pay equity plans.

Subsection 13(7) of the Pay Equity Act specifically stated that the timetable which was to be adhered to was in the regulations and in the act as the first day of January 1995. The NDP government has said that because of the

fiscal situation it thinks that women should have to bear this on their backs, so it will therefore delay pay equity by three years in the public sector.

If this were consistent with what this government did in other areas, perhaps one could somewhat buy an argument that this is a fiscally responsible thing to do. That's not what they did and that's not why they did it. They delayed the achievement of pay equity in the public sector for one reason only: so they could help pay for their promise of proxy to the broader public sector. They've stolen from one group of women in order to make the political bang of giving to another group of women.

I'm sorry. It is totally unacceptable that women be used as tradeoffs and as pawns, and there are many women in this province—and we heard presentation after presentation—who used the words “betrayal” and “shocking” when it came to this provision.

This is the reason that people do not trust government. Government made a commitment, and its commitment was such that it's saying, “The private sector has to go along and it has to adhere to the plan set out in pay equity, but the public sector, we have to pay the shot for that, so we're going to arbitrarily change the rules.” That's what section 7 does, and I just think it is thoroughly reprehensible that this government can try to hold up its head and vote in favour of this particular section.

Mr Chair, when it comes time for a vote on it, I would again ask for a recorded vote.

**Mr Curling:** The motion put forward by the Liberal Party here, as you said, was struck out because we cannot introduce a motion to ask a section to be struck out. I think we're also trying to give you an opportunity to put a date in. As a matter of fact, here's an opportunity for you, where you have postponed this thing to 1998, and moving it from 1995, that it would be quite okay if you as a government then decided that maybe in 1996 or so and then give a proper reason why you have to postpone it to 1998. Here is a government, a party more so, that took all the praise for introducing pay equity. Everywhere I read, that's what I see, and here is an opportunity now—

Interjection.

**Mr Curling:** Mr Jackson, you will get your chance to put your little two-cent bid in.

**Mr Jackson:** It's only a short sentence.

**Mr Curling:** Here is an opportunity, now that you have postponed it to 1998, to make your adjustment accordingly, to make it at a shorter time. Again, I just want to emphasize what Ms Poole had said: that people will not trust you. As a matter of fact, they have doubts now in trusting you. Here is an opportunity for you not to postpone it to 1998 but to make a better and appropriate date. Then maybe you can take some of the praise for advancing pay equity.

**Mrs Caplan:** I would ask the government to reconsider and to withdraw this particular section because of what we heard very clearly from the deputants. That was that this particular amendment rewards bad behaviour. It encourages delay, it is an incentive for delay and it is an incentive that rewards the recalcitrants. Those who have



not sat down to negotiate a pay equity plan will be rewarded by this amendment. Those who have not lived up to their obligations under the present law will be rewarded by being allowed three more years.

Further, those who have not proceeded as it was hoped they would—and we heard from so many groups talking about the difficulties that they had had in negotiating plans. Anyone who has waited and who will use proportional—and you know that many have already used proportional before there was the obligation because the existing law was permissive, and many have made payouts already under a proportional plan—this will not reward those employers who negotiated those plans in good faith, who used proportional value from the time it was announced that it would be public policy. What this particular insidious section does is penalize those who went the extra step, sat down in good faith and negotiated plans and have had their payouts. It rewards those who didn't do that and it penalizes those women who work in those establishments of employers who did not proceed when they could have proceeded under the old legislation.

The one thing I believe government must never do is bring in an incentive that has a reaction that results in behaviour which goes against the public interest. I think this particular amendment is a very poor amendment, because that's exactly what it does.

I would ask the parliamentary assistant to reconsider and to not reward those employers who have not negotiated a plan by allowing them three additional years on the basis of the fact that they will now use proportional value, which was permitted under the existing plan, albeit in a silent manner.

**Ms Murdock:** There is no question, and I do agree that it is something that I wish we didn't have to do, but the realities of this fiscal life we lead here have required that there be a delay. I also agree that those employers who have paid more than the 1%—and there have been some of them out there who have done so—or who have gone and done, as you say, the PV plans and have done so because they're good employers and believe that women should have equal pay for work of equal value, that this section may affect them. But in all likelihood, because they've already done it and did it well before they were required to by law, their intent was to do it anyway. They weren't going to be waiting for a piece of legislation to come through to require them to do so.

1110

But the other thing is that I think what is being forgotten in the comments that have been made is that in the job-to-job, under the 1987 act those employers still have the requirement to maintain that 1% for the public sector going back to 1990, for the private sector for employers with 500 or more going back to 1991 and for 100 to 500 going back to 1992. So they still have to keep that 1% payment there; they're still required to do that. This section does not preclude them from maintaining that 1%.

None of that has been stated in any of the comments made by either the presenters or the opposition throughout this, and I think that is really important, that it opens up the

schedule, not the plan, because the other comment that was made by the presenters was that this section was going to open up the plan and allow employers or unions or whatever to change their plan, and that is not the case. So I wanted to make sure that was clear. In truth, many of the plans that are in place now, when we checked with the pay equity office, don't have a schedule attached, and since this section only applies to the schedule, it will only apply once their schedule is attached, and now under this law they have to do it by 1998.

**Mrs Caplan:** Once again the parliamentary assistant misses the point, and in missing the point proves what my colleague Ms Poole, the member for Eglinton, stated a few moments ago, and that is that this particular section takes from, I think Ms Poole said, Petra and gives to Paula, the old Peter-to-pay-Paul. That's exactly what you've done here, and you've done that for anyone who is in a situation where the employer will have to use proportional value.

The other statements that you make: You allow and delay for three years when proportional value is used, and there are many examples of good employers who negotiated the plans and have made the payouts already. You don't reward them; you penalize them. And you penalize the women in establishments of employers who haven't done it. That's the point that Ms Poole made, and that's the point that you're missing.

What you're missing is that you are building in, in this section, an incentive for employers never having to go that step beyond; never rewarding those who have met and achieved the obligation. The opposite of an incentive is a disincentive, and when you remove the disincentive and allow them three additional years and penalize the women who work for them while their competitors have already implemented their plans, that's patently unfair. It's unfair to the women, it's unfair in the workplace and the marketplace. So I would like you to reconsider that before we vote. There are a number of very significant public policy results from this particular section that I'm not sure you have fully comprehended.

**Ms Murdock:** I don't want to belabour the point, but I think that we have been looking at this from every perspective, and yes, I know exactly what you're saying, but the thing here is that it at least is achievable, and it will get done, albeit a little late. But it's interesting too that I'm hearing those points being made by the Liberal Party when, as we'll see later on when we get into another one of their motions, they would have PV start in 1994, which would put an extreme penalty on them. So in my view, on the basis of the arguments you're making on this section and what you're proposing to do on PV later on, you're talking out of both sides of your mouths, and I don't know how you're doing that.

**Ms Poole:** Mr Chair, just on one point of clarification: The parliamentary assistant just talked about talking out of both sides of the mouth. It is not inconsistent at all. What this government has done through its delay with this legislation—and it's been some 14 months since they first introduced Bill 168—they did nothing—

**Mrs Caplan:** It's been two and a half years since they took office.

**Ms Poole:** They did nothing for, as my colleague says, two and a half years, but they certainly did nothing since they introduced Bill 168. If Bill 168 had come in, you could have had a date of January 1, 1993; it wouldn't have needed to be retroactive. Again, this government has shown its love of retroactive legislation. They seem to think that because the government proclaims an intent of passing legislation everybody has to act as though it's the law.

I'm sorry, Ms Murdock, but that's not the way we've acted in Ontario over the last number of decades and centuries, regardless of the party that's been in power, until this one. So if you're making comments about what the Liberal intent was, it was to say we do not believe in retroactive legislation, and if it hadn't been for the delay of this government, there would be no need of retroactive legislation. Women would have had their plan, they would have had notice to employers as to how long it was going to be to put in a proportional value plan, and January 1, 1993, never would have been retroactive.

**Mrs Caplan:** That's exactly right.

**The Chair:** Further comments or questions? Responses? Seeing none, on the question of section 7, shall section 7 carry? No? Recorded vote. All those in favour?

**Ayes**

Akande, Malkowski, Mathysen, Murdock (Sudbury).

**The Chair:** Opposed?

**Nays**

Arnott, Caplan, Jackson, Poole.

**The Chair:** The motion is carried.

**Mrs Caplan:** Mr Chair, I feel like reminding Ms Akande of an all candidates' meeting that she and I attended when the issue of pay equity was raised. She made the point of the NDP's uniqueness and how they stand alone, and I would say to her after she just voted in support of section 7 that anyone who attended that meeting that night will just wonder exactly what she meant by "stand alone."

**Ms Zanana L. Akande (St Andrew-St Patrick):** One of the things that I might wonder also was that at that time we believed we were coming into a situation where there were funds. Things do change.

Interjections.

**The Chair:** Order, please. Any questions or comments on section 8? I'll try to pace myself. I always get carried away when we get into votes. Questions or comments? Shall section 8 carry? Carried.

On section 9, Ms Murdock, do you have a motion?

**Ms Murdock:** Yes. I move that section 14.2 of the act as set out in section 9 of the bill be amended by adding the following subsection:

"Adjustments

"(3) If a plan is amended under this section, the compensation adjustment for each position to which the

amended plan applies shall not be less than the adjustment that would have been made under the plan before it was amended."

This, if I may, was an oversight, in that under Bill 102 it wasn't clear that a plan could be less than what they would have gotten under a previous plan, and this is a clarification.

**The Chair:** Further comments? Seeing none, on the government motion, all those in favour? Opposed? Carried.

Shall section 9, as amended, carry? All those in favour? Opposed? Carried.

On section 10: Questions or comments? Seeing none, shall section 10 carry? Carried.

On section 11: questions or comments? Shall section 11 carry? Carried.

Section 12: Ms Murdock?

**1120**

**Ms Murdock:** I move that subsection 21.2(6) of the act, as set out in section 12 of the bill, be struck out and the following substituted:

"Investigation and complaints

"(6) If notice is given under subsection (5),

"(a) section 16 applies, with necessary modifications, as if the review officer had received advice under clause 16(1)(a) or a notice under clause 16(1)(b);

"(b) section 22 applies, with necessary modifications, as if a person had filed a complaint with the commission concerning whether the job-to-job method or the proportional value method of comparison can be used in the circumstances;

"(c) section 23 applies, with necessary modifications, as if the commission had received a complaint concerning whether the job-to-job method or the proportional value method can be used in the circumstances;

"(d) subsection 24(1) applies."

It's a technical clarification recommended by the pay equity office.

**The Chair:** Further comments?

**Mr Arnott:** Just a question: I'm wondering if you can give us a little more of the rationale behind it. I don't recall any of the presenters coming before the committee—did the pay equity office indicate that as a part of its presentation?

**Ms Murdock:** We should have put it in and we didn't. For some unknown reason, we didn't put it in, with the complications and the technicalities. But actually, I should probably let Catherine explain, because she was actively involved in this.

**Ms Evans:** The bill currently has provision for sections 16 and 22 to apply. This amendment also references section 23. Legislative counsel would have to explain why there are more words used in this amendment than in the current bill, which simply says that sections 16 and 22 apply.

Section 23 deals with investigation of complaints by the review officer. It simply follows through the steps that the review office, after receiving a complaint, has to do and ensures that these settlement provisions for review services and the ability of a party to seek review of a



review officer decision at the tribunal applies too. So the whole procedure is engaged.

**Mr Arnott:** So it's just a clarification of those two provisions.

**Ms Evans:** It is a technical and procedural amendment.

**Mr Arnott:** Thank you very much.

**Ms Murdock:** It's not substantive.

**Ms Poole:** I just had one question, which followed along the lines of Mr Arnott's. You've said this is a technical amendment, so in effect this is not changing anything set out in Bill 102; it is adding some clarification of what the procedures are.

**Ms Murdock:** For review officers.

**Ms Poole:** But it is not actually changing the practice that is there right now.

**Ms Murdock:** No.

**Ms Evans:** It shouldn't.

**Ms Poole:** Why would this have to be introduced if it isn't changing procedures that are there right now?

**Ms Evans:** It clarifies the application of section 23 and clarifies that the application of section 23 is intended. One could argue that it would naturally follow from sections 16 and 22, but rather than have that argument, one would say section 23 applies to ensure that the procedure can begin and follow right through to the end.

**Ms Poole:** Thank you.

**The Chair:** Further on the government motion? Shall the government motion carry? Carried.

**Ms Murdock:** Continuing on section 12, I move that subsection 21.3(1) of the act, as set out in section 12 of the bill, be struck out and the following substituted:

"Proportional value comparison method

"(1) Pay equity is achieved for a female job class under the proportional value method of comparison,

"(a) when the class is compared with a representative male job class or representative group of male job classes in accordance with this section; and

"(b) when the job rate for the class bears the same relationship to the value of the work performed in the class as the job rate for the male job class bears to the value of the work performed in that class or as the job rates for the male job classes bear to the value of the work performed in those classes, as the case may be."

This permits comparisons under proportional value to be made to a representative male job class or job classes, as was requested by a number of the presenters during the week. It also clarifies the interpretation of the proportional value method; same thing for a single representative male job class or classes. There was some discussion during the presentations as to whether or not the singular was already included in the plural. This basically clarifies it so that there isn't any interpretation required. It will state it clearly.

**The Chair:** Further questions or comments?

**Ms Poole:** I note, consistent with what presenters told you, that you have changed it from "male job classes" to both singular or plural.

**Ms Murdock:** Right.

**Ms Poole:** But one of the other comments that was made by a couple of groups was that they didn't like the word "representative," that they found that difficult. I wonder if you could comment on that particular aspect.

**Ms Murdock:** Actually, I'm going to get Catherine to do this, again, because it has been discussed with me. It is a complicated matter and I don't want to put something on the record that is wrong—at least, I'll try to do it as infrequently as possible—so I'll let Catherine explain "representative," what is meant by that whole definition.

**Ms Evans:** "Representative" is meant as a guide to employers and bargaining agents or the workplace parties to give them some assistance in identifying which kinds of male job class or classes they're looking for. Proportional value can't be used with just any male job class or classes, and it is critical that the employer or the bargaining agent arrive at classes that are representative of the way in which male job classes are paid in that establishment so that they're not all representative of low wages, for example, or they're not representative of high wages, but they are representative of the generic sense of the way male job classes are paid.

They're also representative in relationship to the value of the female job classes which are being compared against them. Proportional value does not let you, for example, compare a very high-valued female job against a very low-valued male job. You need something more representative.

It is a guide. The act is framed to give the parties as much flexibility as is possible to arrive at the system which works best for their workplaces. This is one area in which the government feels that guidance is appropriate.

**Ms Murdock:** I think it probably sounds complicated. The way I understood it was when they literally drew me a picture of the chart. I think one of them was presented where you end up with a whole number of job classes in a cluster kind of thing. You might have one male job class way over that is being paid astronomically differently. It's so significantly different that you can't take the job class by itself, so you take the representative group. The line runs through there, and that's the group you take.

That's probably the easiest way to compare it, because if you took the average, say, and included all those, you would end up with a skewed result. So that's why the word "representative" is used.

**Ms Poole:** If I could sum it up in one sentence, what you're trying to do is remove the aberrations.

**Ms Murdock:** Yes. Thank you.

1130

**Ms Poole:** That makes sense. One of the other questions I have relating to this is what a representative male job class would comprise. For instance, could it be one job, one person?

**Ms Evans:** A single-incumbent job, yes.

**Ms Poole:** Is there anything built in to deal again with aberrations? I know, from your explanation, that's what "representative" is meant to deal with, but could it not be

possible that there would still be an aberration? It may be a representative male job class and yet it is much more—it may be relatively close to the female wage and yet that particular person is paid more than he would be, say, in another establishment by an aberration, for whatever reason, he's the boss's nephew, or you can take whatever reason you want, because one thing that does concern me is aberrations and that it not distort what is really meant to be pay equity.

I'm just wondering, does representative really deal with that problem? Will there be guidelines set out as to what "representative" means. You explained, Catherine, very well what it means, but will there be difficulty for employers who are trying to establish what "representative" means?

**Ms Evans:** The pay equity office has done a great deal of work on this particular provision and will be providing clear, plain language explanations when the amendments are passed concerning how they identify the representative male job class or classes in the establishment.

**The Chair:** Further on the government motion? Shall the government motion carry? Carried.

**Ms Murdock:** I move that subsection 21.3(3) of the act, as set out in section 12 of the bill, be struck out and the following substituted:

"Same

"If, after applying subsection (2), no representative male job class or classes is found to compare to the female job class, the female job class shall be compared to a representative male job class elsewhere in the establishment or to a representative group of male job classes throughout the establishment."

It is consequent to subsection 21.3(2) that we just passed.

**The Chair:** Seeing no comments, shall the motion carry? Carried.

**Ms Murdock:** I move that clause 21.10(1)(a) of the act, as set out in section 12 of the bill, be amended by striking out "or earlier" in the fourth line.

It is a technical amendment to clarify that employers are required to make the first adjustment under proportional value effective January 1, 1993, not January 1, 1993, or earlier, as it was originally drafted. It sort of makes sense that they don't have to do it earlier.

**The Chair:** Further comments? Shall the government motion carry? Carried.

**Mrs Caplan:** If the government had had its act together and brought this legislation through in a timely manner, this amendment would not be necessary. I think this just goes to the ineptitude of the government.

**The Chair:** Motion carried.

**Ms Poole:** In your packages on the white paper you will note there is a Liberal motion which refers to three subsections of 21.10. Legislative counsel has suggested that in the alternative, we would be better to place three separate motions. Because two of the subsections actually are changed because the first one is changed, if it helps expedite matters I'm pleased to introduce the three at the

same time and debate three at the same time rather than do it separately.

**The Chair:** No objections? Okay.

**Ms Poole:** I'm reading from the yellow sheets that were distributed by the clerk.

I move that subsection 21.10(1) of the act, as set out in section 12 of the bill, be struck out and the following substituted:

"Date of first compensation adjustments

"(1) If a pay equity plan is prepared or amended under this part, the employer shall make the first adjustments in compensation in respect of the new or amended portions of the plan on or before the 1st day of January, 1994."

I move that subsection 21.10(2) of the act, as set out in section 12 of the bill, be struck out.

I move that subsection 21.10(4) of the act, as set out in section 12 of the bill, be amended by striking out "the 1st day of January, 1993" at the end and substituting "the 1st day of January, 1994."

The reason for these amendments is plain and simple: to reduce the retroactive aspect of this particular provision. Just as with Bill 4, the rent control freeze legislation, I opposed it because retroactively it brought in provisions and hardship.

In this particular instance I say again that the government should not believe that, because it has introduced legislation or because it has talked about introducing legislation, that legislation is law in the province. The argument has been advanced, not only by the Ministry of Labour and the government members but also by the pay equity office, that employers in this province knew this was coming and therefore they should have prepared. How could employers be assured of that?

In the throne speech in November 1990, the government said that it was committed to bringing in pay equity extension. It was over a year before Bill 168 was introduced. Then for over a year Bill 168 was never called forward for second reading. Then when, finally, the government introduced it was going to move on pay equity, instead of proceeding with Bill 168, it yanked it and brought in Bill 102.

The rules of some of these games have changed along that part, and certainly employers, for instance in the public sector, had a different understanding of what was going to happen. They thought they were going to have to achieve pay equity by January 1, 1995. That changed. A number of things changed.

How can the government honestly claim that employers knew this was coming and that therefore it's justified in retroactively saying they should have been setting aside moneys and they should have it all ready so that when the act is proclaimed and they put in their plan, the money should all be there?

Life doesn't work that way. People obey the law once the law has been passed, and retroactive legislation is the most abhorrent thing because it says retroactively that people must do things. Notwithstanding that they're a majority government and can do whatever they damn well please, it



is not appropriate for government to be saying retroactively, "This is what you had to do."

So I have made a motion that we amend the dates for proportional value to the 1st day of January, 1994. That is consistent with my abhorrence of retroactive legislation, and I say to this government: If you had your act together, there would be no need for retroactive legislation. It would have been in place and employers would have had time to put in their plans and they would have been actually paying into those plans as of January 1, 1993, and no need for retroactive legislation. This is on the head of the government, that your delay has caused this mess, and why should you expect the employers of this province to believe anything you have to say?

1140

**Mr Curling:** I fully support Ms Poole's position on this.

**Ms Poole:** Thank you, Alvin.

**Mr Curling:** I feel, in the same light, that the argument you gave forward about postponing implementing the pay equity in some sections to 1998 and spoke about the fact of the economic situation and also that your government really didn't get its act together in time—in the same way with employment equity, when the people out there are expecting a certain action in Parliament, you delayed it and delayed it and delayed it, and now they don't even know when it will come forward. As soon as you think that you have your act together, you say, "Well, we really had our act together a year ago, but we didn't really put it on paper, so let's go back to January 1, 1993." You have caught all the employers off guard because they don't know the progress and how fast you're going.

I think, in all fairness, that you should look at the proposal put forward by the Liberal motion to put it to January 1, 1994, because I have gone through retroactivity with Bill 51 and we had to make some sort of adjustment, because it just doesn't work. It's hard to manage, and also it creates an amount of problems within an environment that doesn't need that kind of hassle.

I appeal to you as a government, with all the powers you have with a majority, to adjust it to January 1, 1994.

**Mrs Caplan:** One of my colleagues opposite—I believe it was Mr Klopp—talked about parliamentary process and procedure. I'd like to point out that this is now the beginning of February 1993. This piece of legislation will have to be reported back to the Legislature. We don't expect that will happen until some time in April or May. We know there's going to be a new throne speech and a budget, and all of those debates tend to take precedence. We know it will require committee of the whole, third reading, royal assent and proclamation. The chances of that happening before late spring or summer or later than that—given the agenda of this government, you never know. So there will be a very significant time lag before the obligations of this legislation are understood by those it will affect.

Retroactive legislation is inherently unfair. It carries with it the concerns that many people have about the unfairness of looking backward. It's unfortunate that this amendment is needed. I would restate what my colleague

said: The reason this amendment is needed is because of the delay that was caused by this government that has been in power since September 1990 and hasn't taken action on pay equity in that amount of time. It is unfortunate, but I would say again that given the legislative process, it seems to me unreasonable, absolutely unreasonable, to attempt to turn back the clock in a way which is so unfair. Retroactive legislation should have been unnecessary, and in this case I think is just unreasonable.

**The Chair:** Mr Jackson?

**Mr Jackson:** I'll pass in the hope that we can have a vote before 12.

**The Chair:** Ms Murdock, a response?

**Ms Murdock:** I'd just like to make some comments on the three motions put forward by the Liberals. I'm going to state again what I said earlier in response to another motion or amendment, that in terms of the retroactivity, the employers under the public sector were required to maintain the 1% back to 1990. They know that. The employers in the private sector knew that they had to keep the 1% for companies over 500 employees back to 1991, and the employers with 100 to 500 employees knew that they had to keep the 1% back to 1992. So this is not a surprise to the employer groups, as seems to be the feeling of the proponents of these amendments.

I would also point out that, true, we came in in 1990. We said, and we still say, that we are proponents of pay equity. When we put it forth, at least we put some money where our mouth was. We didn't just get up and say that we're supporting proportional value and then, big deal. In March 1990, you say: "I support proportional value. We're going to bring legislation forward." Not a penny of money went forward by the Liberal government. We at least put the money in and the down payment, and this year it's \$240 million more. Knowing we couldn't bring in the legislation because of the way the Legislative Assembly works, that we couldn't bring it in right away, we would end up by at least putting some money to pay for it.

Part of the reason—when it was initially introduced—that we continued and moved Bill 168, and it had to wait till 102, is because many of the proponents who came before this committee two weeks ago wanted proxy. They wanted some kind of guarantee that if you couldn't have proxy by a set date you'd at least have proxy and it would be there in some form or another.

After 168, which would've brought in proportional value for sure and the proxy discussions continued, and as a consequence of those discussions continuing, we ended up having to change 168 into 102. I also want to remind the Liberals that the down payments that have been paid by this government for the proxy sections become part of the base, so the \$2,000 that was given last year, for instance, is included for ever now in those proxy employees who were given the down payment pending the pay equity decision, the plan.

I don't think we have been sitting idly by, as is being implied or directly stated by the Liberals. I would also like to finally point out that Bill 168, if you remember, if we had proceeded on that, had a January 1, 1992, deadline.

This proposal by the Liberals, as I pointed out earlier, means that proportional value would have one year to be put in operation. Frankly, the confusion and difficulties that would arise from that would be unbelievable.

I don't think the retroactivity is the problem that is seen by the Liberals and, as a consequence, we are going to be voting against these motions.

**The Chair:** Further?

**Ms Poole:** I would like to address a number of comments made by the parliamentary assistant.

**Mr Jackson:** Point of order, Mr Chairman: Is it your position now not to recognize a member when he calls the question?

**The Chair:** Not until it's your turn to speak. He doesn't have the floor. Ms Poole has the floor right at the moment.

**Mr Jackson:** Do you have a speaker's list?

**The Chair:** Yes, I do.

**Mr Jackson:** Is the gentleman on it?

**The Chair:** He hasn't indicated that he wanted to speak.

**Mr Paul Klopp (Huron):** I didn't know that procedure. I'm sorry, sir.

**Mrs Caplan:** He's only been here two and a half years.

**Ms Poole:** The parliamentary assistant made the comment that when employers were required to put aside the 1% for 1990, they did so. They did the same for 1992 and they did the same—there's a very major difference. The legislation was passed in 1987 which set out the timetable for when employers had to do this. They knew in advance what was coming and it was legislated in advance what was coming. Well before the 1990 date, this information was available to employers and it had the sanctity of law. This does not meet that requirement.

Secondly, she said the Liberal government announced in March 1990 it was proceeding with proportional but it didn't put a penny into it. Of course they didn't. It was never put into legislation because there was an election five months later. In fact, the election was called four months later. This government has not even been able to put a policy in place in four months, let alone pass legislation and flow of funds. Let's get realistic.

The parliamentary assistant also made reference to changes from 168 to 102. She said, "One of the reasons this was necessary was because they were still discussing proxy and making changes."

It appears from the presentations we had the week before last that the presenters didn't like the changes to proxy that you brought in. They didn't like what you did to Bill 168. They supported Bill 168. They do not support what you've done in Bill 102. So you've made, not changes that your consultation showed were necessary; you've made changes that the very people you consulted with have come and said they don't like the way in which you've done it.

The other point the parliamentary assistant made was that she said the down payment on pay equity made to the

proxy groups will become part of the base. What they really are is part of the bribe.

1150

**Ms Murdock:** Part of the what?

**Ms Poole:** They have been part of the bribe. They were so disappointed, that after press conferences saying how they felt betrayed and used by this government, suddenly a new plan comes up. But this new plan, as shown by a survey that was only sent out in November 1992, was never part of the government's original intention. It was something they brought in, this down payment, in order to try to placate women who felt very badly used by this government.

They act as though wage enhancements are a new thing, and that's what we're talking about. It's not a down payment on pay equity; it is a wage enhancement scheme, the same as the Liberals brought in in 1987 with New Directions for Child Care under the direct operating grants, the same as the NDP government did with the child care wage enhancement. That's what this is. So this is not something new.

But this is not something that solves the basic problem. This government did not know what it was doing. They delayed bringing in pay equity because they didn't know what they were doing, and now they intend to expect us to make their problems come into law retroactively. Well, I'm sorry, we don't agree with your rationale and we don't agree with retroactive legislation.

I don't think we have any further questions or comments. If Mr Klopp wants to call for the vote, and there are no other speakers, that's fine with us.

**The Chair:** Mr Jackson.

**Mr Jackson:** I want to reiterate again that I respect Ms Poole's effort in this bill, but I'm seriously working at keeping my breakfast down when I have to listen to her go on at length, if she's going to wander so extensively on this issue during clause-by-clause.

The truth of the matter is that the Liberals had a bankrupt pay equity plan. It was a mess that dramatically discriminated against a whole group of women in this province, and the voters in this province—in particular women voters in the last provincial election—told this government what it thought of it.

I will agree with the point she's making, but if she's going to persist in overstating the territory on pay equity in such political terms, then it would be very important for me to begin participating in this debate.

On the issue of retroactivity, having served here as long as Ms Poole—no, actually she's served here fewer years than I have, but Ms Caplan certainly—

**Ms Poole:** With much greater effect.

**Mr Jackson:** I'm not about to debate our egos; that's one thing for sure. But I do know that even on the rent control legislation, while she was playing around in municipal politics, there were retroactive elements in the initial rent control legislation.

If we're being forced to sit and listen through all this, I feel it's essential, since the governing members are all relatively new to Parliament, that at least I'm prepared to



participate in this wandering debate on just how overstated the Liberal commitment to pay equity has been in this province. Basically, it's all contained in paper and Ms Poole's efforts so far have been about 90% trying to create additional paper with Hansard.

I'd like to call the question.

**Ms Poole:** Mr Chair, on a point of privilege.

**Mr Jackson:** I call the question. The question takes precedence.

**The Chair:** Point of privilege, Ms Poole.

**Ms Poole:** Mr Chair, aside from many gross inaccuracies in Mr Jackson's statement, he said I tampered in or dabbled in municipal politics.

**Mr Jackson:** Played in municipal politics.

**Ms Poole:** I have never sought election nor been elected to municipal politics, so I wish he'd at least get that very small statement correct.

**The Chair:** All those in favour of calling the question? Opposed? We'll go to the question. The vote will now proceed on section 12 as amended.

**Ms Murdock:** Are we not voting on the Liberal motions?

**The Chair:** By calling the question, you go back to the main motion, and the main motion is on section 12, so the Liberal amendments are superseded.

On the main question, on section 12 as amended, shall section 12 as amended carry? All those in favour? Opposed? Carried.

Interjection.

**Mr Klopp:** It's 12 o'clock.

**The Chair:** The vote has already been taken. The motion is carried.

Being as it's 12 o'clock, this committee will stand recessed until 1:30 this afternoon.

The committee recessed at 1156.

## AFTERNOON SITTING

The committee resumed at 1347.

**The Chair:** I call this committee back to order. We'll now be dealing with section 13. Ms Poole.

**Ms Poole:** I move that part III.2 of the act, as set out in section 13 of the bill, be struck out and the following substituted:

"PART III.2

"ADDITIONAL PAY EQUITY PROVISIONS

"Application

"21.11 This part applies to those public sector employers with a female job class that cannot be compared to another job class under either the job-to-job method or the proportional value method of comparison.

"Compensation adjustments

"21.12(1) A public sector employer shall make such adjustments in compensation as prescribed by the regulations for those employees who are in prescribed occupations or performing prescribed duties.

"Time for complying

"(2) Adjustments in compensation shall be made in accordance with the timetable prescribed by the regulations.

"Act to prevail

"(3) Adjustments in compensation required by this section shall be deemed to be incorporated into and form part of any relevant collective agreement or part of any employment contract between the employer and the employee.

"Regulations

"21.13 The Lieutenant Governor in Council shall make regulations,

"(a) governing the classification of employees according to their occupation or duties for the purposes of subsection 21.12(1);

"(b) governing adjustments in compensation to be made for employees,

"(c) prescribing one or more timetables for making adjustments in compensation."

This Liberal motion deals with removing proxy as the third method of comparison to be used in pay equity. I think it is the supposition of a number of witnesses that they had problems with the proxy method chosen by the government not only in the language but in the fact that it was comparing female jobs to female jobs. This was a violation of the spirit of pay equity and the principles of pay equity as originally set out, which was comparing female jobs to male jobs in order to rectify gender discrimination in compensation within an establishment.

It is our submission, as the Liberal caucus, that proxy is going to create more problems than it solves. We feel a much easier way of dealing with it would be through wage enhancements. It became obvious through several presenters in the hearings that there was concern over whether the government would actually fulfil a commitment to pay the full amount of the pay equity settlements necessary in the proxy area.

If you look at the submission of the Ontario Association of Interval and Transition Houses, it discusses its

problems with the proxy method in a very articulate way. They were concerned, first of all, about whether they would get any help in the implementation process for the plan. They were also concerned about whether full resources would be available from the government in order to pay the plan. In fact, they were fairly critical of the government for not giving enough resources to the women's shelters to begin with, and they feared that this would add one more layer to their sector that would in the end not bring them equity but would bring them additional heartache.

I think it became clear that one of the difficulties with women accepting a wage enhancement instead of a pay equity solution was twofold. The first concern was an equity issue. They felt it was a pay equity issue and it was a matter of approach; they didn't like the idea that it was dealt with as a subsidy as opposed to a pay equity approach. I do have some sympathy for that point of view, but in the final analysis, if you look at the bottom line, which is that you want women to be paid, particularly women who are in these all-female wage ghettos where they are being significantly underpaid, the bottom line is that you want those salaries adjusted. I have pointed out before in committee several ways in which it has already been implemented quite successfully in Ontario, one through the direct operating grants with the child care workers and also the wage enhancements that were followed up under the NDP government.

I guess maybe I'm a pragmatist, but I think the bottom line is very important: Are you going to put in a very complicated, confusing system which certainly does not have any universal acceptance of how it should be put in, a system moreover where there's some reluctance to believe that the government is going to (a) foot the bill, and (b) be able to foot the bill? I think the second one is also a very important criterion.

We have already seen an instance in this particular legislation where, because of the deficit situation, the government has had to backtrack on a commitment to women on pay equity by delaying it three years in the public sector. I think there is a real concern out there that if the government makes a commitment that it cannot keep, this will happen in the broader public sector as well. If the funds aren't flowing, there are only two things that happen: Those public sector workplaces will have to cut staff or cut services—ie, programs—or secondly, that the government is going to have to pay that extra burden, particularly since there are no definitive statistics showing what this is going to cost.

One thing that I think did come through is that there is distrust of government. They felt a legislated solution—ie, through putting a method in the legislation—was preferable because they didn't trust government, this government or any subsequent government, to come through and do what it said it would do if it was in the area of wage enhancements, for instance.



So what the Liberal amendment does is provide an alternative method to have these female job ghettos identified and for wage enhancements to be paid to women in those sectors so that over a number of years the discrimination on the basis of wages could be remedied. So I think, first of all, it is a fiscally responsible approach. I think, secondly, it is a much easier approach and will lead to far less heartache down the road than a method which has engendered so much controversy.

**The Chair:** Response? Ms Murdock.

**Ms Murdock:** I guess basically it would come down to whether you believe in a rights base or an enhancement base. Enhancement, in our view, is not pay equity. In fact, some of the groups—I can't remember who they were, but it was stated during the presentations that they were uncertain under an enhancement program whether they would even reach pay equity.

I think there's another concern that you haven't mentioned, and that is that enhancements can be taken away. At least this is legislated; it would be in there that they would have to start looking at that program. Enhancement, again in our view, is a subsidy rather than a right, and in our view pay equity is a right. I just have real problems with this motion, and it would completely negate all of the proxy discussions that have gone on thus far. I couldn't agree to it.

**Ms Poole:** Just one comment to the parliamentary assistant: What is not legislated in Bill 102 is the fact that the government will pick up the full costs of the proxy as far as paying out the plans is concerned. Quite frankly, I think that then puts Bill 102 in the same position as wage enhancements through regulation, because at any given time this government can renege on its commitment to pay the full cost of the pay equity plans. At any time you can do that. There has already been a place in Bill 102 where this government has reneged on commitments to the pay equity plans in the public sector.

As far as Bill 102 giving legislative assurance is concerned, no, it doesn't. It gives legislative assurance that there is a proxy method. Nowhere in Bill 102 does it say that the government will pick up the full cost of it. Nowhere in Bill 102 does it say what this cost is going to be. Nowhere in this legislation does it say what the government will do if the fiscal situation worsens and it cannot keep their promise. So I don't see where this legislation provides any more assurance in those three areas than does what we are proposing, which is regulations which set out a timetable, which set out the prescribed groups that would be entitled to this, and which set out what the payments are going to be in a very fiscally responsible but secure manner—and this is what the government's intentions are, because what we are talking about is payment, who is going to foot the bill. So I'm sorry; your promise, the promise of the government, is not engendered in this. I don't see in Bill 102 where this government has said that it is going to pay the full cost of pay equity.

**Mr Arnott:** Just to follow up with one of the points that Ms Poole has made—and if I quote her incorrectly, I'm sure she'll correct me—it comes back to the initial

definition of pay equity, does it not, equal pay for work of equal value, which means comparing two different jobs and trying to apportion a value to each and adjust one upwards, which is what pay equity has been since the Liberal government introduced it some years ago.

There are other ways of going about trying to achieve what you want to call pay equity, and you can do it by simply specifying which positions the government feels are presently being underpaid. It doesn't have the pay equity office coming in to administer the entire program, but certainly if the government feels there are certain specific jobs that are underpaid, what's to stop it from designating which ones those are and increasing transfers to those particular jobs?

1400

**Ms Murdock:** Basically, and I'm going to respond to Miss Poole's first and then try and respond to yours, under job-to-job and under proportional value, it doesn't state there in any specific language that the government is the payer or will be paying the pay equity costs. The fact that it isn't stated under Bill 102: I don't think the argument Mrs Poole is using has any weight in that respect.

Secondly, I couldn't begin to count the number of consultations that have occurred with every interest group that would be related to pay equity, and almost all of them have preferred, even though it is complicated, the proxy as compared to enhancement. To now take that out under this motion, I think we would be doing a disservice to all those people we've been dealing with on this for hours and hours, and years with some of the groups.

I guess too it should be remembered, and I think people tend to forget, that proxy does not apply to the private sector. It only applies to the public sector. I don't imagine any subsequent government would change this concept. The government of the day would continue its payment exercise by whatever method is invoked by the parties, be it job-to-job, proportional value or proxy.

I think too that the schedule we submitted on the first day of the consultations assists; it certainly isn't exclusive, but it assists in those designations that you were talking about. But I don't think under legislation you could specify particular jobs that would be considered proxy. I can't think of any piece of legislation that would go to that degree and that kind of thing. I think legislatively it would be a real nightmare, but legislative counsel would probably be able to answer that even more directly. So those are my responses.

**The Chair:** Further comments?

**Ms Poole:** Just to respond to a couple of comments by the parliamentary assistant, when she was talking about the list of women who would be included in this female job ghetto, as I call it, and how difficult it would be to legislate that, that would be in the regulation. In fact, the Ministry of Labour in the document to which I referred yesterday, the document that it sent to the Ontario Federation of Labour, did have a list of those jobs where it would be using the proxy method.

What it would do—the only difference we're talking about—is to put that list of jobs, the list of those who

would be eligible for proxy, in a regulation and set out a timetable by which their salaries would be upgraded until certain goals were reached. So I don't see that it's that much of a legislative difficulty.

**Ms Murdock:** I was responding to Mr Arnott, who was asking that it be put in the legislation.

**Mr Arnott:** No, I wasn't asking.

**Ms Murdock:** Oh, that's what I understood.

**Mr Arnott:** I was merely making the point that it was perhaps an option the government could consider if indeed it was your absolute objective to go ahead in this direction.

**Ms Murdock:** In proxy?

**Mr Arnott:** No. In terms of advancing pay equity.

**Ms Murdock:** In relation to the list from the Ministry of Labour to the OFL, that wasn't an all-inclusive list; it was probable or possible. I guess you're using the term "female ghetto" areas or jobs and the ministry provided those—even when you look at that schedule of jobs, you try to be as inclusive as you can, but there are no doubt going to be other areas that either develop through new technology advances or something. Who knows what could happen? Through regulation, you're right that those kinds of things can be done, but they can be done now.

This Liberal motion would completely remove "proxy system" and put it on basically a low-wage redress system, and we're not in agreement with that.

**The Chair:** Seeing no further comments on Ms Poole's motion, all those in favour? Opposed? Defeated.

**Ms Murdock:** Section 13 of the bill:

I move that clause 21.13(a) of the Act, as set out in section 13 of the Bill, be struck out and the following substituted:

"(a) between each key female job class in the seeking employer's establishment and female job classes in a proxy establishment; and"

The second "female" that is in there on line 2 was inadvertently left out. This section provides explicitly that each key female job class must be compared—and I put emphasis on "compared"—to "female job classes in a proxy establishment." It was the intention of Bill 102 and it's clear from the other sections, but this is a correction.

**The Chair:** Further comments?

**Ms Poole:** Just to say briefly that this area was one in which there was a great deal of consensus that they wished to have female jobs compared to male jobs, as opposed to the government's choice, which was to compare female jobs to female jobs. Although I think this is a minor technical amendment just to reinstate a word which was inadvertently left out, by going this route I think they are going to engender a lot of dissatisfaction with the proxy method itself and how it's implemented.

I go back to the principle of pay equity, which was to redress gender discrimination within the same establishment between female jobs and comparable male jobs. To me, this again does not fit pay equity. It does fit a real problem in our society, which is that you have a number of female groups which have very low wages which should be redressed.

**Ms Murdock:** Just to respond to that, it's being compared to the female job class, which actually came as a suggestion from the pay equity coalition initially. Obviously, from its presentation, it has since redressed that viewpoint or moved away from there, but it made sense when it suggested it in the first place, and it still makes sense in the sense that the proxy establishment will already have done the job comparisons, will already have the pay equity plan in place. That's why you're applying to the proxy establishment.

The gender discrimination that has been suggested: The job had already been compared and so therefore, when you're going from female to female job class, you're comparing the female job to the female job class that has already gone through the whole process of being compared to the male comparators.

Of course, everything is open to discussion, but in our view there isn't the gender discrimination that is suggested from this, just to go on to the other. I'll say it now; I won't say it again when we come up, I promise.

1410

**Ms Poole:** Just one point of clarification for the parliamentary assistant: I didn't say that this method was going to result in gender discrimination. I was talking about the original concept of pay equity and the original principle of pay equity, which was that it was to redress gender discrimination. I'm not saying this will lead to gender discrimination. I did want to clarify that.

**Ms Murdock:** Some of the groups did make that point. They were saying that their fear was that by comparing female to female, you might be doing that.

**Ms Poole:** We discussed this during the hearings. I think the one thing that hasn't been mentioned is when you are comparing a female job to a female job that has already been through a pay equity plan, the success of that comparison relies on the integrity of the original plan, and I think that was one very valid point that was made by several presenters. They were concerned with this indirect comparison, where eventually you would be comparing with the male comparable. But a lot depends on the integrity of that original plan and I think that is one major reason why so many of the groups were opposed to doing this particular method.

**The Chair:** Comment? Seeing nothing further on Ms Murdock's motion, shall it carry? Carried.

**Ms Murdock:** I move that subsection 21.15(5) of the act, as set out in section 13 of the bill, be amended by striking out "subsections 21.17(5) to (7)" in the ninth and tenth lines and substituting "subsections 21.17(4) to (6)."

This section just corrects a typographical error in identifying the subsections dealing with the choice of job classes. That's all it does.

**The Chair:** Further comments? Shall Ms Murdock's motion carry? Carried.

**Ms Murdock:** I move that paragraph 4 of subsection 21.18(2) of the act, as set out in section 13 of the bill, be amended by striking out "job rates" in the last line and substituting "pay equity job rates."



Again, I think it's pretty evident that it requires a proxy pay equity plan to identify the proxy establishment's female job classes to which the seeking establishment's key female job classes were compared in their pay equity job rates; that is, the rate that they'll receive once pay equity is achieved.

**The Chair:** Further comments? Shall Ms Murdock's motion carry? Carried.

Shall section 13, as amended, carry? Carried.

On section 14, Ms Murdock.

**Ms Murdock:** I move that section 14 of the bill be struck out.

**The Chair:** As in my previous rulings, Ms Murdock, this motion is out of order and you'd have to vote against the section. You can't move to strike out. Discussion?

**Ms Murdock:** One of the reasons we wanted to remove it, and we will be voting against our own motion, is that a number of the presentations made to us two weeks ago advised us of the potential here for having changed circumstances in another workplace affecting pay equity plans and so on. We agreed with them and decided to remove that section.

**The Chair:** Further discussion on section 14? Shall section 14 carry? Defeated.

On section 15, Ms Murdock.

**Ms Murdock:** I move that section 15 of the bill be amended by adding the following subsection:

"(5) Section 24 of the act is further amended by adding the following subsections:

"Same

"(5.1) The pay equity office shall be deemed to be the applicant for a reference under subsection (5).

"Same

"(5.2) On a reference under subsection (5), the hearings tribunal shall not consider the merits of the order that is the subject of the reference.

"Burden of proving compliance

"(5.3) On a reference under subsection (5), the person against whom the order was made has the burden of proving that he, she or it has complied with the order."

All of the points here are procedural. It follows along with what's under the present act under 24(3) where pay equity officers have the power to make an order if contravention of the act occurs. It deals with situations where non-compliance continues to occur despite the fact that a pay equity officer has made an order. It follows through then that, for instance—and probably the easiest is to give some examples of where no one in the workforce makes a complaint or doesn't apply when non-compliance is occurring. They've either moved on or they've changed jobs. As a consequence there may not be a gender-neutral plan sitting there, but no one comes forth and the order sits. Therefore, the pay equity office would be able to apply to that.

There have been instances where complainants or workers know that the order is still not being applied but are afraid to come forth and go through the whole process themselves, and this would allow the pay equity office to do it for them. There are other instances, which thankfully don't happen very often, where there are what you call

sweetheart deals where it occurs that there is no applicant and, as a consequence, the order is never complied with and therefore the act is not being complied with.

The other thing is that subsection 24(5), as it exists under the act, already refers to a reference. This continues the procedural application of the reference for pay equity officers.

**The Chair:** Further comment?

**Mr Arnott:** Is this amendment in order?

**The Chair:** There was some concern raised about this and I'd be willing to listen to any points you might have to enlighten the Chair on this.

1420

**Mr Arnott:** It's my understanding that this may not be in order, given that part of the amendment deals with the existing act as it is. It comes outside of the bounds of the bill.

**The Chair:** Ms Murdock, do you have any arguments?

**Ms Murdock:** I just refer back—I know there's been a lot of discussion on this back and forth—to the explanatory notes of the act itself. When you get to the last two paragraphs of the explanatory notes but specifically the last one, where "The bill enables review officers to issue compliance orders for failure to comply with the act," all of the sections here apply to that. It does apply to references under subsection 24(5) under the existing act, but it specifically goes to subsection 24(3) and carries on the procedural consequences of subsection 24(3).

**The Chair:** Further arguments?

**Mr Arnott:** I'm not sure if it's in order or not. I suppose I would ask you to rule based on the information that's been presented. But this replacement government motion was just brought to my attention yesterday and I really feel that there's perhaps more consideration that should be given to it before we go ahead with it.

I understand that the pay equity office has given the concern to the government that this should be undertaken, but I just have a number of questions about it. I find it curious to imagine a situation where the administrative body that is to govern the act—in other words, the pay equity office—would indeed step in if no one's complaining, if everyone's happy. To me, that notion is rather curious, and I'd leave it at that perhaps for now.

**Ms Murdock:** This is where an order has already been written. This is a sequel to an order being written and ignored, and there are instances. We've seen it even when Pay Equity Advocacy and Legal Services was in here making a presentation, where many of the people who wanted to complain about the fact that their needs weren't being met by either their employer or the order just didn't have the nerve to go through the whole process and they needed the assistance of PEALS to act on their behalf.

It is conceivable, in fact it has happened, where the order says you have to comply with the act, the parties do not comply with the act, in fact in instances have removed themselves from some of the requirements of the act, and there is the pay equity officer's order sitting there not

being dealt with at all. At present under the act what they can do is refer it to the tribunal, but then there's no enforcement of that, and the procedures here say that they can be deemed as an applicant.

If the pay equity officer has written up an order and it is not complied with, then all this is saying is that the pay equity officer then can be an applicant for the purposes of that non-complied-with order and only that one. You can't just take any plan and go in willy-nilly and refer these things. It can only be on orders that have already been written, which follows from the functions that are listed under subsection 24(3). That's why I say that it's still in order.

**Ms Poole:** Mr Chair, I've done a fair amount of thinking on this particular one since the government members brought it to our attention yesterday, and it would seem to me that in the original act there was a mechanism for compliance with orders but it doesn't have any teeth and it isn't working. So this is simply a mechanism to ensure that when there is an order, there is a mechanism for compliance that works.

As Mr Arnott said, we have had short notice, since we only had the amendments yesterday, but it would seem to me there's a lot of merit in saying this amendment is in order because it does appear, from the explanation at the front, to meet the criteria and, secondly, it's just really beefing up a provision of the original act.

**The Chair:** Thank you, Ms Poole. I'll make a ruling that this motion is in order. Basically, when you rule things out of order, it's because a section isn't open. This isn't specifically dealing with subsection 24(5); it's in addition to. So, being under the explanatory notes, it is within the scope of the bill. It means it is administrative and procedural. I'll rule that it is in order.

**Mr Arnott:** Just to respond to the parliamentary assistant's discussion earlier, I listened to her very closely and I think I understand her point, but again I state that it's highly curious. There were many people who stressed that the NDP would be an interventionist government. Here we have an example of an intervention into the relationships between people, between employers and employees. Here we have a situation where government says to one of the people who are involved in this relationship: "We're going to improve your lot, and even if you're happy, we're going to tell you, 'No, you're not happy. We're still going to take another step and improve your lot.'" I find it very unusual that the government is looking forward to becoming even more of a Big Brother in society in this respect.

**Ms Murdock:** A Big Sister, I think.

**Mr Arnott:** Secondly, we find the other point that people brought up when the signal first went out, I guess in 1985-86, that pay equity was going to be a policy of our provincial government. People talked about the concept of pay police coming into a workplace and telling employers how much they are going to pay their employees. When this amendment comes forward, and the government is indicating that this enhances the enforcement mechanism that the pay equity office or tribunal has at its disposal, I think you're raising the spectre of the pay police.

**Ms Murdock:** I do want to respond to that. This is not interventionist in the sense that whatever government of the day or the pay equity office is sitting back and just randomly choosing employers and employees it's going to hit on for an order. They have been requested to come in and try to work something out because they can't get agreement. At the end of the day, when the pay equity officer writes up an order, it's for non-compliance to the act, which is law as it stands right now. They're basically saying that these two parties are not complying with the law of the day as it stands. Now, even though no one applied—

**Mr Arnott:** If both parties are happy?

**Ms Murdock:** Even if the two parties are completely happy with the fact that they aren't obeying the law, the fact is that they nevertheless are not obeying the law, that their plan or whatever—it doesn't necessarily have to be specific to that, but whatever it is that they are not complying with—is basically against the Pay Equity Act. I don't see where that's pay police or George Orwellian or anything. It's just saying: "This is the law. You have to abide by it." If you don't do this, what you're allowing is parties to make an agreement not to obey the law, and I don't think that's right. I don't think any government of whatever stripe would think that was right.

**Mr Arnott:** But if you assume that trade unions who represent workers at the bargaining table always act in their best interests, why would the unions in any case—and you mentioned a sweetheart deal. When has that happened?

**Ms Murdock:** The allegation is certainly evident in a couple of cases, and I'm thinking of one case in particular, where there has been opting out of the act and they have basically said, "Well, we're not abiding by a couple of sections of the Pay Equity Act," and both parties have agreed to it, both employer and union. I don't care whether it's a union or not; they should not have the right to opt out of the law at will. They're just basically saying, "I don't feel like following this law, so therefore we won't and we'll get an agreement to do it."

**The Chair:** Ms Evans, for clarification?

**Ms Evans:** For clarification, just to point out that this provision does not prevent a party to an order from asking the tribunal to review the order on its merits. If a party believes that an order is wrong, for example, the party can then apply to the tribunal to have the order rescinded, buried, confirmed, whatever, and this provision simply ensures the order is not ignored. That is the only thing.

1430

**Mr Arnott:** It's an enforcement mechanism. It's not there presently.

**Ms Evans:** It's an enforcement mechanism. However, if a party believes the order is wrong, it is not subject to enforcement in connection with an order it believes is wrong. They can apply to have the order changed, and it doesn't prevent them from doing so.

**Ms Murdock:** I apologize. I was going on the opting-out aspect of it, but yes, that's right. If either one of the



parties were to think the pay equity officer was completely erroneous in whatever decision he came to, then the party can go through that process to have the merits of that decided. If it's still found that they are in error, then the equity officer's order would be enforced under these sections.

**The Chair:** Any further questions or comments? Seeing none, shall Ms Murdock's motion carry? All those in favour? Opposed? Carried.

On section 15, as amended, shall section 15, as amended, carry? All those in favour? Opposed? Carried.

On section 16: Ms Murdock.

**Ms Murdock:** Could I stand that one down, please? I believe legislative counsel and I have to confer for a moment.

**The Chair:** Is there agreement to stand this one down? Agreed.

**Ms Poole:** Just for members' information, I'm reading from the fourth Liberal motion in the yellow sheets now, which was an amendment tabled this morning, subsection 16(8) of the bill, subsection 25(7) of the act.

I move that section 16 of the bill be amended by adding the following subsection:

"(8) Section 25 of the act is further amended by adding the following subsection:

"Burden of proof

"(7) In a hearing before the hearings tribunal, a person who is alleged to have contravened subsection 9(2) has the burden of proving that he, she or it did not contravene the subsection."

This relates back to a section in the Pay Equity Act which gives some enforcement mechanisms when there has been retaliation or where there has been harassment in the case of an individual who wishes to pursue his pay equity rights and is having difficulty doing that because of the employer's actions.

When we had a presentation from PEALS, Pay Equity Advocacy and Legal Services, the week before last, it brought before us the situations where women would not or could not proceed with their pay equity application because of fear of retaliation from the employer. In some cases, there had actually been retaliation and harassment action. One of the difficulties in a number of the cases that PEALS represented the women on is that these women did not have the resources to deal with this, and in fact there was an intimidation factor.

I don't believe this was the original intent of the act. I believe the original intent of the act was that good pay equity employers would do what they were required to do under the act and that employees would not be intimidated out of their rights of pay equity.

What this provision does is provide that under subsection 9(2), which deals with retaliation in the act, the person who is alleged to have contravened the section has the burden of proving that he, she or it does not contravene the subsection. It just puts the onus on a different party as opposed to the person who does not have the resources to proceed.

**The Chair:** Thank you. Further comments?

**Ms Murdock:** Just that I concur with Miss Poole's remarks and fully support this amendment.

**Ms Poole:** This sounds very promising.

**The Chair:** Seeing no further discussion on Miss Poole's motion, shall Miss Poole's motion carry? Carried.

On section 17, any questions or comments?

**Ms Poole:** I just wonder if the parliamentary assistant could explain where this varies from the current procedures under the hearings tribunal and what the change is from the act.

**Ms Murdock:** Which section are we discussing specifically?

**Ms Poole:** Section 17.

**Ms Murdock:** Section 17, the new part?

**Ms Poole:** Yes, subsections 25.1(1), (2), (3), (4), (5) and (6).

**Ms Murdock:** It's regarding settlements before the Pay Equity Hearings Tribunal. How it differs: It binds the parties to the settlement, as well as the employees represented under subsection 25.1(2), where the bargaining agent was a party to the settlement. Just a second; I want to get the act.

**Ms Poole:** Maybe if I ask a question, it might help to put it in—

**Ms Murdock:** It's just that I haven't got my existing act in front of me to see the differences between the two.

Thank you for your patience. Under section 25.1 in the existing act, there is no provision that settlements are final and binding. This provision does make that change under the amendment that we're proposing here today in that there is an avenue to complain if it's not being complied with.

The main reason for this is that it then creates certainty. The way it is under the existing act, the settlements have not been binding to both parties and this provision means they are. That will create certainty, then a settlement is made between the pay equity office and the parties.

**Ms Poole:** Under the hearings tribunal as it exists right now, can there be a settlement in writing?

**Ms Murdock:** Before it goes—when they go through the—

**Ms Poole:** Right now, under the existing act with relation to subsection 25.1(1), in the midst of a tribunal hearing, can the parties settle the matter in writing right now?

**Ms Murdock:** Yes. The way it happens now is that even before it gets to the tribunal, they have pre-hearings and they'll settle oftentimes before they go to the tribunal process, and yes, get it done.

**Ms Poole:** So subsection (1) in itself is not a change. It's the other things about whether, if an agent acted on the part of one of the parties, for instance, this clarifies that it's binding.

**Ms Murdock:** Yes. It's required to do it now. Basically, this is the way the pay equity office started applying it from 1987 and it's been doing that. What section 17 is doing is to put the practice in law.

**Ms Poole:** Okay; so it's codifying the practice into law.

**Ms Murdock:** Right.

**The Chair:** Further on section 17? Shall section 17 carry? Carried.

1440

On section 18:

**Ms Murdock:** It's codifying the practice again, just before Ms Poole asks me.

**The Chair:** Comments or questions?

**Ms Poole:** Just one question: With reference to clause (g), it says, "may in a hearing admit such oral or written evidence as it, in its discretion, considers proper, whether admissible in a court of law or not." The review officers are not under the Statutory Powers Procedure Act.

**Ms Murdock:** Right.

**Ms Poole:** The tribunal is under the SPPA. So does (g) refer to the pay equity office or does that refer to the tribunal?

**Ms Murdock:** To the tribunal.

**Ms Poole:** So that would not violate any part of the SPP act.

**Ms Murdock:** No.

**The Chair:** Further? Shall section 18 carry? Carried.

On section 19, questions or comments?

**Ms Poole:** Just one question: Did you have a definition for "incapacitated"? I'm wondering about all the things that could happen to these hearing tribunal members.

**Ms Murdock:** Some might even think you're—I don't know. I had better not say it.

**Ms Poole:** Intoxicated.

**Ms Murdock:** Yes, you could be incapacitated. "Unable to continue," I think is the standard understanding of "incapacitated," but no, there isn't a definition per se.

**Ms Poole:** I just wondered how often there was incapacity.

**Ms Murdock:** Some people think if you're a New Democrat or a Liberal or a Conservative, depending on your perspective, you would be incapacitated.

**The Chair:** Further comments? Seeing no further comments on section 19, shall section 19 carry? Carried.

Section 20: Ms Murdock.

**Ms Murdock:** I move that subsection 32(1.1) of the act, as set out in subsection 20(2) of the bill, be struck out and the following substituted:

"Same

"(1.1) The hearings tribunal or a review officer may require an employer to post a notice relating to this act in a workplace."

This was simply in response to the fact that the labour groups that came before us specifically said that their collective agreements prevented them from posting any notices in the workplace and that the employer had sole responsibility to do that, so we have included this.

**The Chair:** Further comments? Seeing no further comments on Ms Murdock's motion, shall Ms Murdock's motion carry? Carried.

On section 20, further questions or comments? Seeing none, shall section 20 carry, as amended? Carried.

On section 21, questions or comments? Seeing no questions or comments, shall section 21 carry? Carried.

On section 22, questions or comments?

**Ms Poole:** Could the parliamentary assistant please give us the reference for subsection 22(1)? For instance, (f.1) refers to the maintenance and the limitations on maintenance imposed by this act. Could she please explain section 36 of the act and how it is amended by this particular section?

**Ms Murdock:** Let me get you right. For instance, (f.1) is in reference to section 36. Is that what you're asking me to do, and then go, "Clause (g.1) is in reference to..."? Is that what you're asking?

**Ms Poole:** What I'm referring to is that we have from (f.1) to (g.5) in this list, and I don't know what section 36 of the act says, so I don't know what this particular clause is doing.

**Ms Murdock:** The "Regulations and Miscellaneous" section under part VI of the act: Section 36 specifically says, "The Lieutenant Governor in Council may make regulations," and then it goes, "(a) prescribing forms and notices..." I'll just shorten them, if that's all right.

"(b) prescribing methods for determining the historical incumbency of a job class;

"(c) prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class," and so on.

**Ms Poole:** That's fine. That answers my question. In other words, that was just providing a list of the areas in which there could be prescribed regulations.

**Ms Murdock:** Yes, and hence the reason the dots separate the (f) through to the (g) from 1 to 5.

**The Chair:** Further questions on section 22? Seeing no further questions or comments, shall section 22 carry? Carried.

On section 23, questions or comments? Seeing none, shall section 23 carry? All those in favour? Opposed? Carried.

Section 24, questions or comments? Seeing none, shall section 24 carry? Carried.

Before we revert back to section 16, this committee will take a 10-minute recess.

The committee recessed at 1448 and resumed at 1501.

**The Chair:** I'd like to call this meeting back to order. We'll revert now back to section 16, the motion by Ms Murdock which was stood down.

**Ms Murdock:** I'd ask that the motion be waived and a replacement motion on the same section be considered.

**The Chair:** Do you care to move it?

**Ms Murdock:** I move that section 16 of the bill be amended by adding the following subsection before subsection (1):



“(0.1) Section 25 of the act is amended by adding the following subsection:

“Reference stayed

“(1.1) A reference under subsection 24(5) respecting an order shall not proceed if the hearings tribunal has confirmed, varied or revoked the order following a hearing requested under subsections 23(4) or 24(6).”

Reference on a review officer order is stayed once the tribunal makes a decision on the merits. It ensures that parties cannot move the matter to the tribunal and adjourn sine die or withdraw the application, and in this way non-compliance with an order can be dealt with by a reference under this subsection 24(5), until the tribunal actually examines and rules on the substance of the issue. So the tribunal would have to rule first before you could proceed.

**The Chair:** Further comments?

**Ms Poole:** To me this just makes a lot of eminent sense, that if you are going to have an appeal to the tribunal, you want that settled before deciding whether the

office's order has to be confirmed, varied or revoked, so we would support this amendment.

**The Chair:** Me too.

Seeing no further comments, shall Ms Murdock's motion carry? Carried.

Shall section 16, as amended, carry? Carried.

Shall the title carry? Carried.

**Mrs Caplan:** I don't like the title.

**The Chair:** Nobody ever does.

**Ms Poole:** The pay equity betrayal act.

**Mrs Caplan:** That's what it should be called.

**Ms Poole:** The new title.

**The Chair:** Shall the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall I report the bill, as amended, to the House? All those in favour? Opposed? Carried.

To get a fresh start on Bill 169, this committee stands adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1504.

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- \*Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)  
**Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)  
**\*Akande, Zanana L.** (St Andrew-St Patrick ND)  
Carter, Jenny (Peterborough ND)  
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Harnick, Charles (Willowdale PC)  
Mahoney, Steven W. (Mississauga West/-Ouest L)  
**\*Malkowski, Gary** (York East/-Est ND)  
Runciman, Robert W. (Leeds-Grenville PC)  
Wessinger, Paul (Simcoe Centre ND)  
Winninger, David (London South/-Sud ND)

**\*In attendance / présents**

**Substitutions present / Membres remplaçants présents:**

Arnott, Ted (Wellington PC) for Mr Runciman  
Caplan, Elinor (Oriole L) for Mr Chiarelli  
Coppen, Shirley, (Niagara South/-Sud ND) for Ms Akande  
Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick  
Klopp, Paul (Huron ND) for Mr Morrow  
Mathysen, Irene (Middlesex ND) for Ms Carter  
Murdock, Sharon (Sudbury ND) for Mr Wessinger  
Poole, Dianne (Eglinton L) for Mr Mahoney  
Wiseman, Jim (Durham West/-Ouest ND) for Mr Winninger

**Also taking part / Autres participants et participantes:**

Catherine Evans, policy advisor, rights and legislation, Ministry of Labour

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Hopkins, Laura, legislative counsel





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## Legislative Assembly of Ontario

Second Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 3 February 1993

### Standing committee on administration of justice

Pay Equity Amendment Act, 1993

Public Service Statute Law  
Amendment Act, 1993

## Assemblée législative de l'Ontario

Deuxième intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

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Loi de 1993 modifiant la Loi  
sur l'équité salariale

Loi de 1993 modifiant des lois  
en ce qui concerne  
la fonction publique

Chair: Mike Cooper  
Clerk: Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 3 February 1993

The committee met at 1033 in room 228.

PAY EQUITY AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT LA LOI  
SUR L'ÉQUITÉ SALARIALE

PUBLIC SERVICE STATUTE LAW  
AMENDMENT ACT, 1993  
LOI DE 1993 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
LA FONCTION PUBLIQUE

Consideration of Bill 102, An Act to amend the Pay Equity Act / Loi modifiant la Loi sur l'équité salariale, and Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act / Loi modifiant la Loi sur la fonction publique et la Loi sur la négociation collective des employés de la Couronne.

**The Chair (Mr Mike Cooper):** I'd like to call this meeting of the standing committee on administration of justice to order. This morning we'll be dealing with the clause-by-clause on Bill 169, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act.

Before we begin, I'd like to apologize to the committee for my delay this morning.

Mr Lessard, do you have opening statements?

**Mr Wayne Lessard (Windsor-Walkerville):** I don't have any opening statement, Mr Chair. I do want to advise the committee that there are going to be two amendments to this bill, fairly minor amendments; they've been circulated. The first motion is with respect to the first section. If you'd like me to move that at this time, I can do that.

**The Chair:** Not at this time, thank you. We will get back to you on that. Mrs Caplan.

**Mrs Elinor Caplan (Orléans):** Today we're going to be looking very closely at Bill 169, the Public Service Statute Law Amendment Act. I think what's been significant through the public hearings on this act—and I've been here listening very carefully and reviewing the Hansards from the presentations that have been made—is that I have not heard one presenter say they were consulted about this legislation. I have not heard one presenter say they support this legislation.

The concern I have really is summed up in a brief by the Canadian Union of Public Employees. It was dated January, and I believe if you look at Hansard, this was just about a week and a half ago. They raise the issue of cynicism. They say on page 5 of their brief: "Frankly, we also cannot understand the rationale for bringing forward this legislation in conjunction with Bill 102. Cynically, it has to be asked whether it was hoped that any discussion of this bill would be lost, given that the focus of discussion would be on Bill 102."

That seems to be the concern that many people have. Rather than getting into the principles of Bill 169, which were debated in the Legislature, it's more a question of democratic process.

You have a bill upon which there was no consultation. No one has come forward in support of this legislation. The point that I've been making here at committee is that in order to accomplish the definition of "employer," the government has already done that in Bill 102 by successfully stating in that legislation, which it pushed through with its majority yesterday here in committee, the concept that the government can decide, for the purposes of pay equity, who the employer is.

Bill 169, I've stated before, is more concerned with that little phrase that sweeps and expands the scope of the bill far beyond pay equity by saying the government has the right to determine who is a crown employee for the purposes of pay equity "or any other reason." That is a very significant change. As the Canadian Union of Public Employees said, the presenter we all heard, this is going through without the kind of discussion that could, and in my view should, be taking place.

We also know that the government is intending to open the Crown Employees Collective Bargaining Act, and it seems to me that that is the time for this debate and discussion to be more fully discussed and aired. We know how important it is on public policy issues for there to be discussion, not only with stakeholders but with the public so that they understand fully what legislation is about to do. We know that legislation not only sets a framework but sets a course in a number of different ways. It allows the government either to fund or to manage or to plan or any of those, as well as "It is the law" or "It is against the law."

So legislation does a number of things that I think we have to be very clear about. Here at committee, the concern I have had, the concern I had when I debated this Bill 169 in the Legislature on second reading, is the concern that this is the wrong place for us to be dealing with the issue of how the government decides who is its employee and who is not its employee.

I want to be clear that I believe that is an important debate and discussion, and I have said in committee that in order for government to both plan and manage its fiscal responsibility and deliver the services to the people of this province, that's a very important issue for government. I'm not arguing that they shouldn't be able to determine in a rational way who works for them or to decide who they're going to hire and to have good human resources planning and good personnel practices. I believe the government of Ontario should be a good employer.

But I believe as well that to sneak it into this kind of discussion as a part of pay equity, which is what Bill 169 does, is devious, it is deceptive and it really sweeps a large

public policy decision under the rug in the hope that nobody will notice.

1040

OPSEU said exactly the same thing, and every presenter who came before this committee and spoke to Bill 169 said Bill 169 should be withdrawn. They said it should be withdrawn because this is not the place it should be debated and discussed. They also disagreed with the policy, but they said there has been no consultation. They said there has been no discussion or debate of the issues that Bill 169 raises. I believe that if you're going to have good lawmaking and good public policy developed, the debate, the process, the consultation is extremely important if people are going to respect lawmaking and if you are going to end up with a good law and good public policy.

So as we begin looking at Bill 169, which is quite a simple bill, I think we have to understand that this is flawed public policy development, and while the principles enshrined in the bill are ones that should be debated and should be discussed, I believe they should be debated and they should be discussed within the concept of the Crown Employees Collective Bargaining Act, which is under review at the present time. I also believe they should be reviewed and discussed in the context of the kind of comprehensive approach to this kind of decision-making which is inclusive, so that you include consultation and discussion with those people who are going to be affected and you include the public.

The public thinks this is all about pay equity. We know this goes far beyond pay equity: We know this has huge implications. So I want to be on the record, Mr Chairman, as objecting to the process of this policy development and as objecting to Bill 169 because of its deceptive and devious nature. I want to be clear on the record that the policy should be debated and discussed. I think the government has achieved its objective around the definition of "employer" with Bill 102, and if further change and amendment is needed, I think it's better placed in another bill, which would be more comprehensive: within the Crown Employees Collective Bargaining Act.

As I sum up, Mr Chairman, I think that if the public and if the stakeholders are going to be less cynical about what goes on here at Queen's Park, if people are going to have more confidence in us and in the government—and I'm talking about us as legislators—we have to tell them clearly what we're doing. We can't try to sweep something in along with something else because we think we can get away with it. Secondly, we've got to be open about allowing people to participate in the discussion before the fact and not after the fact.

**Mr Norman W. Sterling (Carleton):** Coming to this committee on these bills for the first time, I have just one question: Why is the government discriminating against women, visible minorities and handicapped people in the public service? Why are you doing that?

**The Chair:** Questions and comments?

**Mr Jim Wiseman (Durham West):** Is that a rhetorical question? Because it's not true.

**Mr Sterling:** Why are there different rights for visible minorities, women and handicapped in the public sector versus the private sector? Why are there differences?

**Ms Sharon Murdock (Sudbury):** Are we talking about employment equity or are we talking about Bill 169?

**Mr Sterling:** We're talking about these bills. They are the group these bills are aimed at. I know that employment equity is a different issue and that's not what we're dealing with here. We're dealing with pay equity and those are the groups that pay equity is targeted at: women—

**Ms Murdock:** Women, yes. Women, period.

**Mr Sterling:** I would assume it's those other groups as well.

**Ms Murdock:** Within that group, which constitutes 51% of the population, I might add, are minorities and so on, but this is women.

**Mr Sterling:** I disagree with you, but notwithstanding that, if you want to limit it to discrimination against women, then why are you discriminating against women in the public service vis-à-vis the private sector? Why do they have fewer rights?

**Mr Lessard:** I don't really understand the question. My response with respect to the discrimination issue, however, as it relates to employment equity, is that the original bill permitted discrimination of a large number of women—our estimates were 420,000—who didn't have access to pay equity, and that is the right to receive equal pay for work of equal value. The legislation that we're dealing with here, Bill 102, is going to extend that—

**Mrs Caplan:** No, this is Bill 169.

**Mr Lessard:** Bill 102 is one of the bills that we were dealing with. It's going to extend the ability for that group of women to access pay equity.

**Mr Sterling:** Yes, but Bill 169 opts out certain people in our society from the rights that we're creating under Bill 102 and our previous laws. You're creating two different classes of people here in Ontario society: those who work for the public sector and those who don't.

**Mrs Caplan:** A point of order, Mr Chairman.

**The Chair:** On a point of order, Mrs Caplan.

**Mrs Caplan:** While I'm trying to understand the questions from my colleague who's just arrived, and I know how interested he is in these issues, the bill that's before us today is Bill 169 and I think it would be appropriate if we discuss Bill 169.

**The Chair:** Quite right, Mrs Caplan. Mr Sterling.

**Mr Sterling:** Mr Chairman, I understand Bill 169 opts out certain people who are working for agencies whose principal sources of funding are coming through the provincial government. Is that not correct?

**Mr Lessard:** I'm going to ask our ministry staff to respond to that.

**Ms Barbara Sulzenko:** If I understand your question, it's what is the impact of Bill 169 in relation to the extension of pay equity? What Bill 102 does is guarantee that any women working in the public sector who are currently discriminated against with respect to their pay rates are



going to be able to get pay equity, are going to be able to be paid equitably vis-à-vis males. As a result, they will not have to seek government-as-employer rulings, as under the existing Pay Equity Act, in order to have access to pay equity.

Consequently, Bill 169 defines who is a public employee, or a crown employee or a public servant—okay?—for the purposes of the Public Service Act and acknowledges that women will no longer have to become public servants in order to get pay equity because of Bill 102.

**Mr Sterling:** So what we're doing is we're giving some rights to some women but not giving them to others. Is that correct?

**Ms Sulzenko:** No, that's not what I said. By virtue of Bill 102, every woman in the public sector will have access to pay equity.

**Mr Sterling:** Including those who work for commissions and transfer agencies?

**Ms Sulzenko:** Including those who work for any transfer agencies, yes.

1050

**Mrs Caplan:** I think it's important for Mr Sterling's understanding of Bill 169 to know that in this bill the government of Ontario gives to itself a right it has not given to any other employer in the province, and that is the right to say who is its employee, not only for the purpose of pay equity but for any other purpose. That's what distinguishes Bill 169. The argument I've been making is that it goes far beyond pay equity. They have also in Bill 102, which we dealt with yesterday—I refer you to section 2—defined there who is an employee.

**Ms Sulzenko:** Actually, if I could elaborate on that point, what section 2 of 102 says is that a crown employee or a public servant is as defined in the Public Service Act. It's Bill 169 that defines what a public servant is, or a civil servant or a crown employee, under the Public Service Act. That's the precise connection between those two bills.

**Mrs Caplan:** The point I'm making, to be fair, is that's where this legislation is particularly devious, because if the government had wished, in Bill 102, section 2, it could there have defined very clearly who was an employee for the purposes of pay equity. But instead, by making the link to this Bill 169, which then expands that right way beyond pay equity to everything else, it has created a situation where all of those who came before this committee and spoke about Bill 169 expressed their distress at the fact that this legislation went beyond the scope of pay equity, that there had been no consultation, and recommended withdrawal of this bill.

**Ms Dianne Poole (Eglinton):** I just want to explore the point Mrs Caplan just raised. Section 2 of Bill 102, which we have already debated and has been referred back to the Legislature, gave the government of Ontario a right that no other employer in the province has, which is to determine for purposes of pay equity when it is and when it is not an employer and who its employees are. In every other instance in Ontario, under the pay equity legislation, it would be the commission and the tribunal that would make that determination.

As opposed to protecting the rights of women, say, in the children's aid societies, what this government has done and what it has expanded further by Bill 169 is to say, "No, for purposes of pay equity we are making that decision whether you are our employee or not."

The ministry officials and the parliamentary assistant know full well that the reason they did that was because the children's aid society workers, who are funded by the Ontario government and whom the tribunal decreed were crown employees for purposes of pay equity, have had their rights taken away by both section 2 and by Bill 169. I want to be clear that this is not extending any rights of women in this particular bill. It is taking away rights women had achieved under the tribunal decision.

**Mr Lessard:** If I could respond to that, I think with respect to the children's aid society workers, at least, the decision of the tribunal was on a case-by-case basis. They didn't say all children's aid society workers in the province of Ontario are considered to be employees of the government of Ontario. Because of the options being limited in the present legislation, it was required for those workers each time to make an application to the tribunal, thereby incurring expenses for legal costs and the time involved, and also with the possibility that they wouldn't be so declared and wouldn't have that access to pay equity.

The rights they have to obtain pay equity have been expanded, and I think it's only prudent, as Mrs Caplan indicated, fiscally responsible, to have the government determine who its employees are.

**Ms Poole:** To deal with the children's aid society instance first, with the children's aid society decision, the Kingston-Frontenac decision, this was a decision that related to that particular society. But quite frankly, it was a decision that would be used as a precedent in any future pay equity matter involving children's aid societies. The circumstances in that particular situation were not unique to the Kingston-Frontenac Children's Aid Society; they were unique to the funding situation of children's aid societies and children's aid society workers across the province.

To say that it was just this one little incident and that it was going to be extremely costly for each children's aid society to take its case before the tribunal is not the issue. The issue was, what was the end result of that tribunal decision which would impact on the finances of the government? As Mrs Caplan said in a very articulate fashion earlier on, it's not whether this is or is not a good public policy, for the government in Bill 169 to say: "We want to be fiscally prudent. We want to be able to control the size of the civil service." We are not saying that is a bad policy. What we are saying is that Bill 169 has been buried in Bill 102, absolutely buried.

When the presenters came forward, they talked about Bill 102 and as an afterthought said, "By the way, we don't like Bill 169 and it should be withdrawn." It was an afterthought. There has been no public consultation. There is no need for Bill 169 to be introduced at this particular time because you could have dealt with it in section 2 of Bill 102 with the way you worded it: "For purposes of pay equity, this is the situation." At least that way you'd be up

front. What we're saying is that we're going to give ourselves a right that no other employer in the province of Ontario has in being able to decide when we are the employer. But you didn't do that.

What you did was to try to slide Bill 169 through the back door, and very successfully, I might add. There's been no major outcry, there's been no major demand for consultation because most people don't even know this is happening. You have something that goes far beyond the policy ramifications in Bill 102 and pay equity, yet there's been nothing said on this. There has been no discussion, no debate. That is what I find reprehensible. If this government is going to purport to have good policy development and be the government where "consultation counts," to use those infamous words, then you have to consult. You don't try to bury a piece of legislation in Bill 102.

But this government will continue to do it, because you've been quite successful, because the presenters who came before us were far more interested in and far more prepared to talk about the ramifications of the pay equity provisions than they were about the provisions of Bill 169. That's the thing we really object to, the underhanded, sneaky and devious way in which you've put through Bill 169 when there was a far more appropriate place in which to do this, where you would have had to explain the policy rationale and listen to people and what they thought about this legislation.

**The Chair:** Further comments or questions? Mr Lessard, response?

**Mr Lessard:** In response, I just want to point out that the reason the children's aid society workers in the Frontenac case had to take the route they did is because they didn't have the access to pay equity set out for them in the bill, and they were forced to do that. The reasoning in that case is that it's only going to set a precedent if it withstands an appeal. The government disagrees with the opinion of the tribunal in that case and the case is under appeal at the present time, so we don't know whether it's going to be applicable to all children's aid society workers in the province, as you've indicated in your remarks.

I recall one of the presenters when asked—I think it was one of the CUPE delegations—whether they wanted to see the definition that is in Bill 169 with respect to crown employee included in Bill 102, they didn't feel that was appropriate. So I don't think there was universal agreement with respect to having those two things included.

1100

**Mrs Caplan:** Mr Chairman, if you go back and check the Hansard, that is not what they said. What they said is they didn't agree with the policy, they didn't think it should be in 169, they thought that should be withdrawn and they wouldn't want to see the same policy in 102, but at least then you'd have the policy debate. They did not say it would not be appropriate to put it in; they disagreed on the policy of it. So let's be really clear as to what they said. They also said there was no consultation with them on that policy issue.

**The Chair:** Thank you, Mrs Caplan. Further, Mr Lessard? No? Ms Poole.

**Ms Poole:** When you're talking about the children's aid society and that particular decision that was made by the tribunal, that in effect will be overturned by section 2 of Bill 102 and substantiated by Bill 169. This was not an isolated case, and children's aid society workers feel that this government has betrayed them by what it's done.

One of the presentations that has been filed with the committee—and I'm sure you must have received it—was a written submission by the Kenora-Patricia Child and Family Services. Their submission is that they are deeply concerned about the proposed changes. They say, "If enacted in its current form, Bill 102 will deny potentially substantial pay equity adjustments to many members of our association."

They do not feel that by bringing in proportional and proxy, you have solved their particular problem, because they're saying what you have done is to say that their work will continue to be undervalued. I would refer you to their submission, dated January 29, 1993, that was filed and distributed by the clerk.

**Mrs Caplan:** I think Ms Poole is absolutely correct. I would point out to the parliamentary assistant that it was pointed out to us that Bill 169 makes irrelevant all of those cases. We heard from the ministry and presenters themselves that what it means when they do this is that there's a significant public policy change that nobody has been consulted about. They think this only applies to pay equity.

We know that this bill also is retroactive—and I would refer you to page 3 of the bill, section 4, "This act is deemed to have come into force on the 18th day of December, 1991"—another piece of retroactive legislation that will make irrelevant the very decisions and the public policies that people have been functioning and operating under.

That's only as it pertains to pay equity. We know that Bill 169 goes far beyond pay equity and that there has been no discussion, no public consultation and not one presenter has come forward on Bill 169 to say that they think it's a good idea. What they've said is: "We'd like a chance to debate and discuss this. We'd like to be consulted. Where did this come from?" That's what we're saying to the parliamentary assistant.

**Mr Lessard:** The retroactive date in the legislation is the date of the first reading in the Legislature, and the fact is that the case that Ms Poole is referring to hadn't been filed with the tribunal before that date. We don't really know what the outcome of any application that would have been made would be, if they ever made an application.

**Mrs Caplan:** We know this date prejudices; because of the retroactivity of this bill, this will prejudice that case.

**The Chair:** Mr Lessard, would you like to continue, please?

**Mrs Caplan:** You can't say it won't. I'm telling you.

**The Chair:** Ms Caplan, please let Mr Lessard finish first.

**Mr Lessard:** I would say these committee hearings are very much a part of the democratic process and give people an opportunity to make comments with respect to the bill. My information is that there was lots of consultation that took place prior to these bills being introduced.



My colleagues may disagree, because people don't agree with it. Consultation doesn't necessarily mean agreement.

**The Chair:** Mrs Caplan.

**Mrs Caplan:** Now that I have the floor, I can restate what I was provoked to say while the parliamentary assistant was making his statement. You have to tell people the truth. This legislation will prejudice those cases that you are referring to when you say that the outcome is unknown. The truth is that this legislation will prejudice it.

The truth is that the presenters who came forward said, "Yes, we were consulted on Bill 102, on pay equity." Nobody said they had been consulted on Bill 169 and the public policy implications of Bill 169. That's the reality, that's the truth and that's why people are so cynical about this bill; it's that you're not telling them the truth.

**The Chair:** Ms Poole.

**Ms Poole:** When you talk about the fact that there was ample consultation and the democratic process was followed, let's get real.

I talked to OPSEU representatives last June. The meeting was specifically called, and Gerry Phillips was there as well, to discuss Bill 169, which once again was on the government's order paper to go into second reading. The meeting was to discuss OPSEU's reaction to this and it was very clear from that meeting that in fact this consultation process had not occurred.

I would like you to tell us if you indeed have had this extensive consultation process that you purport to have had on this issue, on Bill 169. I would like you to tell us about some of the groups you consulted with that concurred that this indeed was a good bill, that it was appropriate to tie it in with the pay equity legislation and in fact should not be a part of the CECBA review; which groups you consulted with that gave you that information.

**Ms Sulzenko:** I can attempt to answer that question in so far as I'm aware of the fact that prior to the introduction of 169 and 102, when it was originally 168, there were numerous discussions with the Equal Pay Coalition, with public sector unions, in which the government's intention to proceed with the contents of Bill 169 were made known, and made known in the context of what was happening in pay equity with Bill 102 and the extension of pay equity to people who had been denied pay equity under the previous legislation.

**Ms Poole:** No, I asked the question: Which groups did you consult with that agreed with the direction in which you were going and did not feel this should be part of any CECBA review, that felt that this legislation should be introduced at this time with the pay equity legislation, which groups agreed with the government position that this is how you should deal with this legislation and how you should deal with this policy?

**Mr Lessard:** You're concerned with the process, and our submission is that there was consultation, and consultation doesn't necessarily mean people agreed with it.

**Ms Poole:** Did anybody agree with you? One group, one association? One? Did they say that this was a good policy or that it should be tied to Bill 102 instead of being part of a CECBA review? Just one?

**Mr Lessard:** I'm not aware of any.

**Ms Poole:** In other words, this consultation did not involve listening; it just involved the pro forma: "We're telling you we're doing this. Tough."

**Ms Sulzenko:** I should say that the consultation was on the package of legislation which is in front of this committee now, which includes two bills, and that there were elements of that package the various groups consulted agreed with and elements of the package they disagreed with. Through the course of the consultation changes were made. But the consultation that was conducted was on the package as it has proceeded into the Legislature.

1110

**Ms Poole:** As Mrs Caplan pointed out earlier, that's the basic problem with this so-called package. It doesn't fit together. There's no necessity to bring in 169 at this time, except for the fact the government wanted it lost in the pay equity portion of the package.

CUPE is an organization that is very friendly towards your government, that has supported a number of things that your government has done. They were appalled by the cynicism. To repeat, they said, "Cynically, it has to be asked whether it was hoped that any discussion of this bill," ie, Bill 169, "would be lost, given that the focus of discussion would be on Bill 102."

I can't see how you can purport to have had a discussion of the ramifications of Bill 169, the impact of Bill 169, when it's very clear that the presenters you were talking to had the focus of Bill 102 and that you cannot name one group, one association, that agreed with what you were doing with Bill 169, either the timing or the actual policy.

To me, that is no type of consultation; that's camouflage: "Let's try to slide this through under the door while nobody's looking." I don't see how this government can justify dealing with this bill in that way.

**Mr Sterling:** Tell me if I understand this correctly, because I think it's important. At the present time, who is or who is not a public servant? It's decided, as I understand it, in various different tribunals dealing with various and different issues, normally labour-oriented issues. Under this bill, am I to understand that the government, with a stroke of the pen, can effectively reduce or increase the public service at will, either down or up, as it pleases?

**Mrs Caplan:** By regulation.

**Mr Sterling:** By regulation, a stroke of the pen.

**Ms Sulzenko:** There's no question but that the bill establishes for the government the ability to determine who is a public servant and who is a crown employee. That's the purpose of the bill. The government has made that very clear.

**Mr Sterling:** There's a rumour circulating that the government is about to create three large corporations, essentially to funnel off debt obligation; at least that's the way it's viewed by me. If, for instance, they said, "We are going to chop the Ministry of Natural Resources up into a number of different corporations or agencies," you could, under your bill, reduce the civil service for the Ministry of

Natural Resources to maybe 25 or 50 people and the rest of the people would no longer be public servants?

**Mrs Caplan:** The answer is yes, by regulation.

**Mr Sterling:** No—I mean, I'm talking about power.

**Ms Sulzenko:** If named in the regulation, they would continue to be crown employees. If not named in the regulation, the successor rights would apply, so the terms of the collective agreement that the employees enjoy would be extended to them in the new formulation. If they were not crown employees, then they would have bargaining rights under the Labour Relations Act.

**The Chair:** Further comments or questions?

**Mr Sterling:** At the time the regulation was made to make people no longer public servants or in fact make some people public servants who were not public servants before, what is the requirement under this act for there to be public hearings, input, before the cabinet makes that decision? Is there any requirement?

**Ms Sulzenko:** No, there is no requirement for hearings.

**Mr Sterling:** Therefore, this could happen holus-bolus, significant shifts of status of employees, without any kind of public hearing, notice or anything else.

**Mrs Caplan:** The answer is yes. Hansard will please note that I said the answer is yes. That's what we've all been saying since second reading debate in the Legislature: huge public policy implications. The answer is yes. The government parliamentary assistant doesn't even understand what they're doing.

**Ms Murdock:** I don't know how Mrs Caplan has suddenly developed skills in terms of being able to read minds. However, I would just like to point out that governments through history have had cabinet ministers—Mrs Caplan was one, Mr Curling was one, Mr Sterling was one—and we're sitting here, and they are going to be the ones who are making the decisions in terms of these regulations.

I hope, and it's certainly evidenced in our cabinet and I presume in future cabinets, that those people will be making conscientious decisions under the regulations, as they have done in all kinds of pieces of legislation that have been developed by this government and this Legislature for hundreds of years.

**Mrs Caplan:** I would like to apologize to the parliamentary assistant. I said a moment ago that she didn't know what she was doing. Her long explanation said they know exactly what they're doing, and the answer to Mr Sterling is yes.

**The Chair:** Mr Sterling, you still have the floor. My apologies.

**Mr Sterling:** As I understand it, under our present laws, if a government decided that it wanted to treat a certain group of people who were or were not public servants, if it was a question mark, those employees could seek redress from the Ontario Labour Relations Board, for instance, or the Pay Equity Commission, depending on which was the primary issue. As a side issue, both of those tribunals have decided that a certain group of people are public servants. That's what has happened to date, as I understand the existing law. Is that not correct?

**Ms Sulzenko:** There have been some of those cases.

**Mr Sterling:** What this says is that, notwithstanding what the Ontario Labour Relations Board decides or the pay equity tribunal decides in terms of the status of that group of employees, the government, by fiat, through regulation, can say, "No, that's not right, you are not public employees."

**Ms Sulzenko:** That's correct. The purpose of the bill is for the government to make the determination and to be accountable to the Legislature for the size of the public service.

**Mr Sterling:** But when a regulation is passed, there's no accountability to the Legislature of Ontario.

**Ms Sulzenko:** The government is accountable to the Legislature for all of its actions.

**Mr Sterling:** You mean in the normal sense. There's no debate that's required; it's done.

**Ms Sulzenko:** You're absolutely right.

**The Chair:** Further questions.

**Ms Poole:** I'd like to go back to the very paternalistic comments of the parliamentary assistant, Ms Murdock, when she said that basically, yes, it would be done by regulations, but you have to trust that these are thoughtful, sensitive people in cabinet who are going to make the right decision. This sounds to me like the divine right to rule.

Interjection.

**Ms Poole:** That's exactly what this sounds like, the divine right to rule. That's exactly what this is: We don't need public hearings; we don't need to consult on any major shifts. If you listen to what Mr Sterling has just said, he has said that this government has said, "We should have the right to determine the size of the public service." But they have not answered the question about these crown corporations that are in the midst of being formed, which will be outside the normal deficit picture of the Ontario government and will be dealt with as separate organizations.

By regulation, what this government could do is say, "This group of employees no longer are crown employees under the Ministry of Natural Resources." They could say, "They are going to be assigned to this crown agency." Their figures are separate, like Ontario Hydro; their deficit is not included as part of the Ontario government's overall deficit picture.

It's not only that you are trying to slide this legislation through; you are also trying to slide it through so that this government can hide its true deficit picture, so that it can pay what used to be crown employees in a very different way. It's more creative accounting.

1120

**Mrs Caplan:** I'm going to try and be as clear as I can be about the power that Bill 169 gives to the government. With the stroke of a pen, and that's by regulation, without any public hearing, the government will be able to take away the rights of people, the protections they now have, to argue before tribunals that have been established to protect those rights. You are giving, by this legislation, Bill 169, the right by order in council, by regulation—order in council



is the cabinet—to take away rights and to increase or to decrease the size of the civil service at will.

That takes away rights of people without public hearing, without recourse, without right of appeal. That's what Bill 169 does. It does not require any debate, any discussion, and it's not just for those people who would like to be civil servants in the future, who would like to be crown employees or be considered crown employees in the future. Bill 169 allows, by change in regulation, the designation and the de-designation, the determination of who has the rights of protections afforded a crown employee; that is the enormous public policy implication that I have been referring to.

I've tried to state it as clearly as I can so that members of the government will understand exactly what they're doing. I hope I've explained it simply and clearly. I would say to you that the people of the province, the crown employees today, don't really understand what you're doing, and I don't believe you understand the policy implications for the future.

I think Ms Poole is right, that this could be used in a way which is not contemplated today, and I also believe that it is an important public policy issue and debate that deserves more than the attention it has received here at this committee, that the appropriate place for this debate should be part of changes to the Crown Employees Collective Bargaining Act, because it potentially takes away the rights of those people who are crown employees today. We know it takes away the rights of those people who want to argue their status in the future as crown employees.

With the changes in Bill 169, you will give to this NDP government and future governments the power, by the stroke of a pen, to take away rights of existing crown employees, of their own employees. As I mentioned when we had a representative here from the ministry yesterday, the Deputy Minister of Labour, this would interfere with employer-employee relations. That was what I was referring to.

**Mr Alvin Curling (Scarborough North):** I just want to understand retroactivity and consultation. When the government announced its bill and said that it would be retroactive to December 1, 1991, for the first reading, are we saying then that any consultation that takes place, that part of it is not debatable, it cannot be changed? In other words, that's what it will be. Is that what it means?

**Ms Poole:** December 18, 1991, would be the date.

**Mr Curling:** Would be the date, no matter what second reading, no matter what consultation, no matter what happens, all those who come before you, should they come before you, that's not a debatable part of the—

**Mr Lessard:** I'm not going to be introducing an amendment to that section here today.

**Mr Curling:** You're not going to introduce an amendment. Therefore, from the first day you introduced it, you're saying, "It's not debatable and I will not be introducing an amendment," even though today is February 1993 and you introduced it at that time, you had taken that position from December 1991. I am just trying to understand consultation and retroactivity.

**Mr Lessard:** We're not introducing an amendment—

**Mr Curling:** Just answer yes or no.

**Mr Lessard:** —to that section with respect to the date here today.

**Mr Curling:** Therefore, that's the position you would be in, no matter who came before you at that time; you'd have made up your mind already. Your government had made up its mind that that will not change. I just want to understand that, because you see, we're talking about a democracy and your colleagues over there were talking about being different and that's what the consultation is about.

As Ms Poole has said, it seems to me you can't first-name anyone who supported your position, so we've put that aside since you can't. Therefore, you did not consider at all any of those who came before you, no matter what they said—this is the law. There's no use going through this exercise because you have no amendments to that part.

**Mr Lessard:** There were consultations that took place before the introduction date of the legislation. There were consultations that took place after the introduction. There hasn't been any amendment with respect to the effective date of the legislation. However, I can't give you a definite answer that it may not be amended at some future date. All I'm telling you is that I'm not introducing an amendment here today.

**Mr Curling:** It's an extremely sad day for democracy each day you speak here, because the fact is, it seems to me, that people have no venue in which to express, to convince, to coerce, to change any legislation that is put forward, and I'm hearing that this is the law. Many times I'm here trying to get you to debate, but I feel, what's the use? You will listen but you haven't heard. In the same way I feel that those who have come before you, you have not even heard what they've said, and it is extremely sad.

The next point I'd like to make and to ask you—and I just want a clarification on this—Ms Poole asked the question whether the deficit position of all the crown agencies that are now deemed not part of the public service, would those assets or liabilities be taken into account as part of the government liabilities and assets too? For they are no longer the public service. Let me go back.

**Ms Sulzenko:** I don't understand the question.

**Mr Curling:** Oh, again we hear but we don't listen. These are agencies that will be deemed, by regulation some of them, not a part of the government public service any more because of the regulation. Is that so?

**Ms Sulzenko:** Well, let me just say that the government today has the power to close down a ministry, to lay off people—

**Mr Curling:** As of today.

**Ms Sulzenko:** Today, under the existing law.

**Mr Curling:** And also the crown, the retroactivity—

**Ms Sulzenko:** Without any Bill 169, the government can close down five ministries and lay off all the employees of those ministries. Bill 169 has no impact on that power. Now those employees would have rights under their collective agreement and they would have rights under the Employment Standards Act with respect to notice of layoff and severance and so on, but it currently is

within the power of the government to expand or reduce the size of the public service.

What we're talking about with Bill 169 is whether employees of agencies that are outside the public service should be able to be determined to be public servants and crown employees, and this bill prevents that from happening unless the government agrees to it.

**Mr Curling:** If they're outside, why are you making regulations to say they won't be a part of the government any more?

**Ms Sulzenko:** Because up until now it has been possible for those employees to proceed to a tribunal to get a third-party determination that they were crown employees. Now that has led to the government feeling that it is vulnerable to the expansion of the public service beyond its own ability to control that and to be accountable to the Legislature for that.

**Mr Curling:** Aren't some of these agencies completely funded by government? They have no other source of funding, of creating any funds for themselves. They are funded completely by government.

**Ms Sulzenko:** Some of these agencies are funded completely by the government, but they are also subject to local boards which are responsible for them, who operate them and are, in fact, in law the employers of the individuals working for those agencies, who are accountable to their communities, being groups of people in the community, and their municipal government.

In the children's aid society case, for example, it's 20% funded by the municipality and there's a lot of local accountability. The local boards of the children's aid societies are very concerned about being able to maintain their legal and de facto position as the employers of their employees. They don't believe that they could fulfil their responsibilities in their current mandate if they were no longer the employees of those individuals.

**Mr Curling:** But the power of government-flowed funds to those agencies, as subject to regulations and laws and all that—that must be approved by the government. So when you say that they have to be accountable to their people, the fact is that most adhere to the policies and regulations by the government, which they get their funding from. Most of them, sole funds, are coming from government. So when you say to me that, well, they have regulations and they're accountable to the people, all those kinds of things we know, but I'm saying to you that there are agencies that get entire funding, or the majority of their funding, from the government and are considered as agencies of the government.

I want to get back to the retroactivity. All along the years they were considered a part of the government. You said that as of that date, they were no longer, by some regulation. Not only did you say that, and what you're explaining to me is the government has this power to cut back and do all that. We're not talking about from here on. You're saying also the power is to go back to two years, to December 1991, and say, "Not only can I do that now, but I would consider you no part of me in December 1991."

Now I'm going to ask the parliamentary assistant a political question: Do you think that is fair?

**Mr Lessard:** I don't know what the impact of that might be. I don't know what your point is.

**Mr Curling:** They're no longer your father or your mother; that's the impact.

**Mr Lessard:** Why would we want to add to that list?

**Mr Curling:** Mr Chairman, if the minister didn't know the impact of that, why put a regulation in if you don't even know the impact and have taken the position away back that there's no debate on it? And you're telling me you don't know the impact of this? It's really, really frightening if you have put a regulation in here that's not debatable and tell me now you don't know the impact of it when you did put it in.

**Mr Lessard:** Names are on the regulation. I don't know the impact of what you're suggesting, that other names may be addable to that list.

**The Chair:** Thank you. Further questions or comments? Responses? Ms Akande?

**Ms Zanana L. Akande (St Andrew-St Patrick):** Mr Chair, it would be my wish, and I'm not sure that this is appropriate at this time, to call a brief recess at this time, if we may, so that there's some discussion of this.

**The Chair:** This committee will stand recessed for 10 minutes.

The committee recessed at 1133 and resumed at 1145.

**The Chair:** I call this meeting back to order. On section 1, Mr Lessard.

**Mr Lessard:** I'd like to move that subsection 8.1(4) of the Public Service Act, as set out in subsection 1(2) of the bill, be amended by striking out "public employee" in the third line of the English version and substituting "public servant".

**The Chair:** Comments, Mr Lessard?

**Mr Lessard:** My only comment is that there was a drafting error in the original bill, and it's being corrected through this amendment.

**The Chair:** Further comments? Seeing no further comments, shall Mr Lessard's motion carry? Carried.

Mr Lessard, the next motion.

**Mr Lessard:** The next motion is with respect to subsection 1(2) of the bill. I move that section 8.1 of the Public Service Act, as set out in subsection 1(2) of the bill, be amended by adding the following subsections:

"Direction re appointment

"(6.1) The Lieutenant Governor in Council may, by order, direct an agency of the crown designated in the regulations to expressly appoint as a crown employee an individual who is employed in the service of the agency.

"Same

"(6.2) If the agency does not make the express appointment within the time indicated in the order, the Lieutenant Governor in Council may, on behalf of the agency, expressly appoint the individual as a crown employee."

**The Chair:** Comments?



**Mr Lessard:** The government is concerned that crown agencies may fail to appoint employees as crown employees and therefore, relying on the fact that the Labour Relations Act doesn't bind crown agents, create a class of employees without bargaining rights. To ensure that agencies do not abuse the provisions of Bill 169 by refusing to appoint genuine crown employees, the government is proposing that a residual power be reserved in the Lieutenant Governor to require an agency to exercise its authority.

**The Chair:** Further comments? Shall Mr Lessard's motion carry? Carried.

On section 1, as amended, comments? Shall section 1, as amended, carry?

**Mrs Caplan:** Could I make a comment? I'm not going to make it on every section as we go through. I believe that this legislation is premature. I believe there has not been enough public consultation and scrutiny of the public policy issues contained in Bill 169.

I supported the bill in principle in the Legislature because I think it is important that we have debate and discussion on the public policy. I also believe that the government has the right to manage. Having said I support in principle the concept of the ability to manage, I believe that this piece of legislation potentially gives government power without scrutiny, without accountability, that perhaps we should consider in a broader forum before we confer. I believe the right forum for that debate is the Crown Employees Collective Bargaining Act, which is under review right now.

I'm going to be voting against these sections because of the way the government has introduced this bill, because of the way it has proceeded with this bill and because of the lack of support from any presenter who came forward and the request from those presenters for the kind of consultation and scrutiny that you normally have for a major public policy decision.

I want to put my position clearly on the record as objecting to the process of this piece of legislation. I too am cynical that the government has deliberately and deceitfully attempted to put this through under the guise of pay equity when it has much broader public policy implications. I object to that, and it is because of that objection that I will be voting against this in committee.

**The Chair:** Thank you, Mrs Caplan. On section 1—Mr Sterling.

**Mr Sterling:** Because the Liberal Party has put forward its position with regard to the overall intent of the bill, I think it's far too much power resting in the hands of the cabinet of Ontario to deal with the lives of employees to allow them by fiat to determine their future without the right of notice, without the right of hearing. It is unbelievable that a government that portrays itself as sympathetic to labour's concerns would consider such a matter in terms of having such powers over individuals without giving them some very, very basic rights. So we will be voting against all sections of the bill.

**The Chair:** Thank you, Mr Sterling. Further?

On section 1, as amended: Shall section 1, as amended, carry? All those in favour? Opposed? Carried.

On section 2: Comments? Shall section 2 carry? All those in favour? Opposed? Carried.

On section 3: Comments? Shall section 3 carry? All those in favour? Opposed? Carried.

On section 4: Comments? Mr Arnott.

**Mr Ted Arnott (Wellington):** Thank you, Mr Chairman. I would just like to ask the parliamentary assistant, and I made this concern clear during the course of presentations, why it was so urgent to make this bill retroactive to the date of first reading.

**Mr Lessard:** The purpose was so that employees of agencies didn't continue to make applications to be declared crown employees for pay equity purposes after that date, after the introduction of the legislation.

**Mr Arnott:** But you feel that's a reasonable way to approach this Legislature in terms of retroactive legislation?

**Mr Lessard:** We provided the other alternative options as far as accessing pay equity and felt that it was unnecessary for them to have to take that other course of action.

**The Chair:** Further on section 4? Shall section 4 carry? All those in favour? Opposed?

**Mr Arnott:** Can we have a recorded vote?

**The Chair:** Recorded vote. All in favour?

**Ayes**

Abel, Akande, Lessard, Malkowski, Murdock (Sudbury), Wiseman.

**The Chair:** Opposed?

**Nays**

Arnott, Caplan, Curling, Poole, Sterling.

**The Chair:** Section 4 is carried.

On section 5: Comments or questions? Shall section 5 carry? All those in favour? Opposed? Carried.

Shall the title carry? Mrs Caplan?

**Mrs Caplan:** I don't like the title.

**The Chair:** Shall the title carry? Carried. Shall the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall I report the bill to the House? In favour? Opposed?

**Mr Sterling:** Recorded vote, please.

**The Chair:** Recorded vote. All those in favour?

**Ayes**

Abel, Akande, Lessard, Malkowski, Murdock (Sudbury), Wiseman.

**The Chair:** Opposed?

**Nays**

Arnott, Caplan, Curling, Poole, Sterling.

**The Chair:** Carried.

Seeing no further business before the committee, this committee stands adjourned to the call of the Chair.

The committee adjourned at 1155.

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \*Chair / Président:** Cooper, Mike (Kitchener-Wilmot ND)  
**Vice-Chair / Vice-Président:** Morrow, Mark (Wentworth East/-Est ND)  
**\*Akande, Zanana L.** (St Andrew-St Patrick ND)  
Carter, Jenny (Peterborough ND)  
Chiarelli, Robert (Ottawa West/-Ouest L)  
**\*Curling, Alvin** (Scarborough North/-Nord L)  
Harnick, Charles (Willowdale PC)  
Mahoney, Steven W. (Mississauga West/-Ouest L)  
**\*Malkowski, Gary** (York East/-Est ND)  
Runciman, Robert W. (Leeds-Grenville PC)  
Wessenger, Paul (Simcoe Centre ND)  
Winninger, David (London South/-Sud ND)

**\*In attendance / présents**

**Substitutions present / Membres remplaçants présents:**

Abel, Donald (Wentworth North/-Nord ND) for Ms Carter  
Arnott, Ted (Wellington PC) for Mr Runciman  
Caplan, Elinor (Oriole L) for Mr Chiarelli  
Lessard, Wayne (Windsor-Walkerville ND) for Mr Morrow  
Murdock, Sharon (Sudbury ND) for Mr Wessenger  
Poole, Dianne (Eglinton L) for Mr Mahoney  
Sterling, Norman W. (Carleton PC) for Mr Harnick  
Wiseman, Jim (Durham West/-Ouest ND) for Mr Winninger

**Also taking part / Autres participants et participantes:**

Sulzenko, Barbara, policy adviser, broader public sector labor relations secretariat, Management Board of Cabinet

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Hopkins, Laura, legislative counsel

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